

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MAY 18, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 31
 DEFENDANT.)
) PAGES 5872 - 6157

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074
LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 A P P E A R A N C E S: (CONT'D)

2 FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
3 BY: MOLLY MCCAFFERTY
4 SHAWN ESTRADA
5 THE ORRICK BUILDING
6 405 HOWARD STREET
7 SAN FRANCISCO, CALIFORNIA 94105

8 BY: JEFFREY COOPERSMITH
9 AARON BRECHER
10 AMANDA MCDOWELL
11 701 FIFTH AVENUE, SUITE 5600
12 SEATTLE, WASHINGTON 98104

13 BY: STEPHEN CAZARES
14 77 SOUTH FIGUEROA STREET, SUITE 3200
15 LOS ANGELES, CALIFORNIA 90017

16 BY: AMY WALSH
17 51 W 52ND STREET
18 NEW YORK, NEW YORK 10019

19 ALSO PRESENT: OFFICE OF THE U.S. ATTORNEY
20 BY: MADDI WACHS, PARALEGAL
21 SARA SLATTERY, PARALEGAL

22 ORRICK, HERRINGTON & SUTCLIFFE
23 JENNIFER CYGNOR, PARALEGAL

24 PROLUMINA
25 BY: CHRISTIAN TIEDEMANN
26 2200 SIXTH AVENUE, SUITE 425
27 SEATTLE, WASHINGTON 98121

28 UNITED STATES POSTAL INSPECTION SERVICE
29 BY: CHRISTOPHER MCCOLLOM

30 FEDERAL BUREAU OF INVESTIGATION
31 BY: MARIO C. SCUSSEL

32 UNITED STATES FOOD & DRUG
33 ADMINISTRATION
34 BY: GEORGE SCAVDIS

INDEX OF PROCEEDINGS

GOVERNMENT'S:

MARK BURNES

DIRECT EXAM BY MR. SCHENK	P. 5877
CROSS-EXAM BY MR. COOPERSMITH	P. 5911
REDIRECT EXAM BY MR. SCHENK	P. 5927

MEHRL ELLSWORTH

DIRECT EXAM BY MR. SCHENK	P. 5930
---------------------------	---------

BRENT BINGHAM

DIRECT EXAM BY MR. BOSTIC	P. 5940
CROSS-EXAM BY MR. COOPERSMITH	P. 5964

ERIN TOMPKINS

DIRECT EXAM BY MR. BOSTIC	P. 5977
CROSS-EXAM BY MR. COOPERSMITH	P. 5991
REDIRECT EXAM BY MR. BOSTIC	P. 6012

BRIAN GROSSMAN

DIRECT EXAM BY MR. LEACH	P. 6036
CROSS-EXAM BY MS. WALSH	P. 6138

INDEX OF EXHIBITS

IDENT. EVIDENCE

GOVERNMENT'S

4938, PAGES 2 AND 8	5886
4415	5896
5839	5948
5840	5950
2730	5952
2729	5955
5843	5960
5838	5961
5483	5982
5484	5990
1360	6055
1404	6057
1422	6081
4077	6086
1443	6106
1454	6113
1477	6117
5441	6122
1482	6125
1505	6127
1506	6128
5858, REDACTED	6137

DEFENDANT'S

20683, PAGES 1 AND 9	5995
14259, REDACTED	6006

SAN JOSE, CALIFORNIA

MAY 18, 2022

P R O C E E D I N G S

(COURT CONVENED AT 9:05 A.M.)

(JURY IN AT 9:05 A.M.)

THE COURT: WE ARE BACK ON THE RECORD IN THE BALWANI
MATTER. ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

OUR JURORS ARE PRESENT.

GOOD MORNING, LADIES AND GENTLEMEN.

BEFORE WE START TESTIMONY, LET ME ASK THE JURORS THE
QUESTION: HAVE ANY OF YOU HAD OCCASION TO LEARN ABOUT, READ,
DISCUSS, OR IN ANY WAY DO ANY INVESTIGATION ABOUT THIS CASE
DURING OUR BREAK?

IF SO, PLEASE RAISE YOUR HAND.

THANK YOU. I SEE NO HANDS. THANK YOU VERY MUCH.

DOES THE GOVERNMENT HAVE A WITNESS TO CALL?

MR. SCHENK: YES, YOUR HONOR.

THE UNITED STATES CALLS DR. MARK BURNES.

THE COURT: THANK YOU.

(PAUSE IN PROCEEDINGS.)

THE COURT: GOOD MORNING, SIR. IF YOU WOULD COME
FORWARD.

I'LL INVITE YOU TO STAND OVER HERE WHILE YOU FACE OUR
COURTROOM DEPUTY. IF YOU WOULD RAISE YOUR RIGHT HAND, SHE HAS
A QUESTION FOR YOU.

(GOVERNMENT'S WITNESS, MARK BURNES, WAS SWORN.)

09:07AM 1 THE WITNESS: YES, I DO.

09:07AM 2 THE CLERK: THANK YOU.

09:07AM 3 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR.

09:07AM 4 LET ME INVITE YOU TO MAKE YOURSELF COMFORTABLE. ADJUST

09:07AM 5 THAT CHAIR AND MICROPHONE AS YOU NEED.

09:07AM 6 AND THERE'S SOME WATER THERE SHOULD YOU CARE TO --

09:07AM 7 THE WITNESS: THANK YOU.

09:07AM 8 THE COURT: -- REFRESH YOURSELF.

09:07AM 9 OF COURSE.

09:07AM 10 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR

09:07AM 11 NAME AND THEN SPELL IT, PLEASE.

09:07AM 12 THE WITNESS: DR. MARK BURNES, B-U-R-N-E-S.

09:07AM 13 THE COURT: AND IS MARK M-A-R-K?

09:08AM 14 THE WITNESS: YES.

09:08AM 15 THE COURT: GREAT. THANK YOU.

09:08AM 16 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR.

09:08AM 17 **DIRECT EXAMINATION**

09:08AM 18 BY MR. SCHENK:

09:08AM 19 Q. GOOD MORNING, DR. BURNES.

09:08AM 20 A. GOOD MORNING.

09:08AM 21 Q. I SEE YOU'RE GOING TO TESTIFY THIS MORNING WITH A CLEAR

09:08AM 22 MASK ON; IS THAT CORRECT?

09:08AM 23 A. YES.

09:08AM 24 MR. SCHENK: AND I BELIEVE THERE'S NO OBJECTION FROM

09:08AM 25 THE DEFENSE TO THAT PROCEDURE, YOUR HONOR.

09:08AM 1 MR. COOPERSMITH: THERE IS NONE, YOUR HONOR.

09:08AM 2 THE COURT: ALL RIGHT. THANK YOU.

09:08AM 3 MR. SCHENK: THANK YOU.

09:08AM 4 Q. DR. BURNES, ARE YOU CURRENTLY EMPLOYED?

09:08AM 5 A. I'M SELF-EMPLOYED AS A PHYSICIAN.

09:08AM 6 Q. YOU SAID AS A PHYSICIAN. AS A MEDICAL DOCTOR?

09:08AM 7 A. YES.

09:08AM 8 Q. AND WHAT TYPE OF MEDICINE DO YOU PRACTICE?

09:08AM 9 A. INTERNAL MEDICINE.

09:08AM 10 Q. HOW LONG HAVE YOU DONE THAT?

09:08AM 11 A. SINCE 1992.

09:08AM 12 Q. WOULD YOU BRIEFLY DESCRIBE FOR THE JURY YOUR EDUCATIONAL
09:08AM 13 BACKGROUND?

09:08AM 14 A. I WENT TO UNDERGRADUATE SANTA CLARA UNIVERSITY HERE.

09:08AM 15 THEN I WAS GONE INTO THE MILITARY SERVICE FOR ABOUT SIX
09:08AM 16 YEARS.

09:08AM 17 THEN I WENT TO POST-GRADUATE SCHOOL IN TUCSON, ARIZONA,
09:08AM 18 THE UNIVERSITY OF ARIZONA, FOR ONE YEAR.

09:08AM 19 THEN I APPLIED AND WAS ACCEPTED TO MEDICAL SCHOOL AT
09:09AM 20 ST. LOUIS UNIVERSITY IN ST. LOUIS, MISSOURI IN 1985 TIMEFRAME.

09:09AM 21 I GRADUATED FROM THERE IN 1989.

09:09AM 22 I PERFORMED RESIDENCY IN PHOENIX, ARIZONA, AND I COMPLETED
09:09AM 23 IN 1992.

09:09AM 24 AND THEN I OPENED PRIVATE PRACTICE AT THAT TIME IN
09:09AM 25 PHOENIX.

09:09AM 1 Q. YOU OPENED YOUR OWN PRIVATE PRACTICE IN THE PHOENIX AREA
09:09AM 2 IN 1992?

09:09AM 3 A. YES.

09:09AM 4 Q. AND WHAT TYPE OF MEDICINE DO YOU PRACTICE AT THIS PRIVATE
09:09AM 5 PRACTICE?

09:09AM 6 A. INTERNAL MEDICINE, WHICH IS GENERALLY FOUNDING CARE FOR
09:09AM 7 ADULTS AND ELDERLY, MOSTLY OLDER FOLKS.

09:09AM 8 Q. YOU SAID INTERNAL MEDICINE IS GENERALLY TO CARE FOR, I'M
09:09AM 9 SORRY?

09:09AM 10 A. ADULTS. BUT MOST OF MY PRACTICE IS ELDERLY.

09:09AM 11 Q. IN THE COURSE OF YOUR MEDICAL TRAINING, DID YOU GAIN
09:09AM 12 EXPERIENCE WITH A BLOOD TEST THAT IS KNOWN AS PSA?

09:09AM 13 A. YES.

09:09AM 14 Q. WOULD YOU DESCRIBE THAT EXPERIENCE TO THE JURY, YOUR
09:10AM 15 TRAINING?

09:10AM 16 A. INITIALLY IT WAS -- THE TRAINING INVOLVED MEDICAL SCHOOL
09:10AM 17 COURSES, FOLLOWED UP IN RESIDENCY, AND THEN IT'S BEEN PART OF
09:10AM 18 MY PRACTICE FOR THE LAST 30 YEARS.

09:10AM 19 Q. AND TELL ME ABOUT THAT PART. WHAT TYPE OF EXPERIENCE DO
09:10AM 20 YOU HAVE WITH THE PSA BLOOD TEST THROUGH THE COURSE OF YOUR OWN
09:10AM 21 PRIVATE PRACTICE?

09:10AM 22 A. I'VE USED IT FOR HELPING DIAGNOSE EARLY PROSTATE CANCER
09:10AM 23 PRIMARILY OVER THE LAST 30 YEARS.

09:10AM 24 I'LL EXPLAIN FURTHER IF YOU NEED ME TO.

09:10AM 25 Q. SURE. THANK YOU.

09:10AM 1 A. PSA STANDS FOR PROSTATIC SPECIFIC ANTIGEN. BASICALLY IT'S
09:10AM 2 A WASTE PRODUCT IS THE WAY I EXPLAIN IT THAT COMES FROM THE
09:10AM 3 PROSTATE GLAND AND GOES INTO THE BLOOD. AND IT'S PROPORTIONAL
09:10AM 4 TO THE SIZE AND ACTIVITY OF THE PROSTATE GLAND.

09:11AM 5 SO AS MEN GET OLDER, THE PROSTATE GENERALLY GETS LARGER
09:11AM 6 AND THE PSA RESULTS IN THE BLOOD GENERALLY TENDS TO FULLY RISE
09:11AM 7 OVER TIME.

09:11AM 8 THE REASON WE MEASURE IT MOSTLY IN GENTLEMEN, MEN OVER AGE
09:11AM 9 50 GENERALLY, IS YOU TRY AND DETECT A RISE OF USUALLY ABOUT
09:11AM 10 SUSPICIOUS ENOUGH TO CONSIDER THAT PROSTATE CANCER MAY BE A
09:11AM 11 POSSIBILITY.

09:11AM 12 Q. AND DID YOU JUST SAY TO DETECT A RISE?

09:11AM 13 A. YES. THE -- INITIALLY WHEN IT WAS DEVELOPED I BELIEVE BY
09:11AM 14 THE NIH ABOUT 35 YEARS AGO OR SO, IT WAS TO BE USED AS A
09:11AM 15 DETECTION TOOL FOR DOCTORS FOR PROSTATE CANCER, EARLY
09:11AM 16 DETECTION.

09:11AM 17 AND THIS HAS NOT BEEN CHANGED ON THE LAB WORK, BUT YOU'LL
09:11AM 18 SEE RANGES THAT I MIGHT SHOW YOU LATER IN LAB WORK THAT RANGE
09:11AM 19 FROM 0 TO 4 AS THE NORMAL RANGE, BUT THAT'S NOT REALLY USEFUL.

09:12AM 20 FROM WHAT I DESCRIBED, AS THE PROSTATE GROWS, THE PSA IN
09:12AM 21 THE BLOOD SLOWLY RISES AT DIFFERENT RATES IN DIFFERENT MEN.

09:12AM 22 SO WHAT WE'RE LOOKING FOR IS NOT THE TOTAL VALUE. IT
09:12AM 23 SHOULD BE A SLOW, STEADY RISE IN A FAIRLY STRAIGHT LINE.

09:12AM 24 BUT IF WE SEE IT JUMP UP MORE THAN TWO OR THREE TIMES,
09:12AM 25 THEN WE GET SUSPICIOUS FOR THE POSSIBILITY OF PROSTATE CANCER.

09:12AM 1 Q. AND IN THE COURSE OF YOUR PRACTICE, HAVE YOU HAD AN
09:12AM 2 OPPORTUNITY TO ORDER THE PSA BLOOD TEST FOR YOUR PATIENTS?

09:12AM 3 A. YES.

09:12AM 4 Q. DO YOU HAVE THE ABILITY TO ESTIMATE FOR US HOW MANY TIMES
09:12AM 5 YOU'VE ORDERED A PSA TEST SINCE YOU OPENED YOUR PRACTICE IN
09:12AM 6 '92?

09:12AM 7 A. WELL, FOR 30 YEARS FOR MEN OVER 50 -- I HAVE A SMALL
09:12AM 8 PRACTICE NOW, BUT OVER THE YEARS THE NUMBER OF TESTS IS
09:13AM 9 PROBABLY OVER 10,000.

09:13AM 10 Q. AND HAVE YOU HAD THE OPPORTUNITY TO SEE OR EVALUATE THE
09:13AM 11 RESULTS FROM THOSE ORDERS, THE ACTUAL PSA SCORES?

09:13AM 12 A. YES, I DO THAT ROUTINELY.

09:13AM 13 Q. AND WHEN YOU'VE EVALUATED THOSE SCORES, HAVE YOU HAD THE
09:13AM 14 OPPORTUNITY TO EVALUATE SCORES BOTH WITHIN THE REFERENCE RANGE
09:13AM 15 THAT YOU JUST DESCRIBED TO US AND OUTSIDE OF THE REFERENCE
09:13AM 16 RANGE?

09:13AM 17 A. YES.

09:13AM 18 Q. HAVE YOU HAD THE OPPORTUNITY TO EVALUATE SCORES THAT ARE
09:13AM 19 ABNORMAL OR MUCH HIGHER THAN THE REFERENCE RANGE?

09:13AM 20 A. YES.

09:13AM 21 Q. HAVE YOU -- DO YOU HAVE THE ABILITY TO ESTIMATE FOR US HOW
09:13AM 22 OFTEN THAT OCCURS, THAT IS, YOU RECEIVE AN ABNORMAL SCORE?

09:13AM 23 A. WHAT I WOULD CONSIDER ABNORMAL, THAT WOULD INSTILL SOME
09:13AM 24 SUSPICION TO LOOK FURTHER, PROBABLY, PROBABLY ABOUT, I'M
09:13AM 25 GUESSING, ABOUT 4- TO 500.

09:14AM 1 Q. YOU MENTIONED A MOMENT AGO THAT THE PSA TEST IS USED AS A
09:14AM 2 TOOL TO HELP DIAGNOSE PROSTATE CANCER; IS THAT CORRECT?

09:14AM 3 A. THAT'S ITS PRIMARY PURPOSE.

09:14AM 4 Q. HAVE YOU HAD THE OPPORTUNITY DURING YOUR PRACTICE TO
09:14AM 5 DIAGNOSE PROSTATE CANCER FOR SOME OF YOUR PATIENTS?

09:14AM 6 A. YES.

09:14AM 7 Q. AND DO YOU KNOW HOW OFTEN THAT OCCURS? HOW MANY
09:14AM 8 PATIENTS --

09:14AM 9 A. OVER THE LAST 30 YEARS, THIS HAS HELPED ME DIAGNOSE EARLY
09:14AM 10 ABOUT 200 PATIENTS WITH PROSTATE CANCER.

09:14AM 11 Q. THANK YOU.

09:14AM 12 YOUR HONOR, THE GOVERNMENT NOW OFFERS DR. BURNES AS AN
09:14AM 13 EXPERT IN THE AREA OF DIAGNOSING PROSTATE CANCER, THE BLOOD
09:14AM 14 TEST FOR PSA, AND INTERPRETING PSA TEST RESULTS.

09:14AM 15 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

09:14AM 16 THE COURT: THANK YOU.

09:14AM 17 THIS WITNESS WILL BE PERMITTED, LADIES AND GENTLEMEN, TO
09:14AM 18 TESTIFY AS AN EXPERT AS TO THOSE AREAS AS ARTICULATED BY
09:14AM 19 MR. SCHENK.

09:14AM 20 YOU WILL BE GIVEN, IN THE FINAL INSTRUCTIONS, INSTRUCTIONS
09:14AM 21 ON HOW YOU MAY USE THIS TESTIMONY.

09:15AM 22 MR. SCHENK.

09:15AM 23 MR. SCHENK: THANK YOU.

09:15AM 24 Q. DR. BURNES, I'D NOW LIKE TO ASK YOU SOME QUESTIONS ABOUT A
09:15AM 25 PARTICULAR BLOOD TESTING LAB BY THE NAME OF THERANOS.

09:15AM 1 ARE YOU FAMILIAR WITH THE COMPANY THERANOS?

09:15AM 2 A. YES.

09:15AM 3 Q. DO YOU REMEMBER HOW YOU FIRST BECAME FAMILIAR WITH
09:15AM 4 THERANOS?

09:15AM 5 A. I BELIEVE IT WAS A MARKETING REPRESENTATIVE THAT CAME TO
09:15AM 6 THE OFFICE.

09:15AM 7 Q. CAME TO YOUR OFFICE?

09:15AM 8 A. YES.

09:15AM 9 Q. AND, AGAIN, WHERE IS THAT LOCATED?

09:15AM 10 A. IN GOODYEAR, ARIZONA.

09:15AM 11 Q. IS GOODYEAR NEAR THE PHOENIX AREA?

09:15AM 12 A. YES, IT'S PART OF THE METROPOLITAN AREA.

09:15AM 13 Q. AND WHAT DO YOU RECALL ABOUT THE LAB, THERANOS? WHAT WAS
09:15AM 14 IT ADVERTISED TO YOU AS OFFERING?

09:15AM 15 A. IT WAS OFFERING A NEW FORM OF LAB TESTING, WHICH I WAS
09:15AM 16 VERY EXCITED TO HEAR ABOUT. AS A -- WE WERE TRYING TO -- THE
09:15AM 17 TEST THAT I ROUTINELY DO AS A FAMILY DOCTOR, CBC'S, CHEMISTRY
09:16AM 18 TESTS AND THE LIKE, AND SO HAVING TO DRAW MULTIPLE TUBES OF
09:16AM 19 BLOOD FROM PATIENTS, AND MUCH OF THAT GETS TOSSED ANYWAY.

09:16AM 20 WITH A PINPRICK, THEY SHOWED THAT THEY COULD OBTAIN MOST
09:16AM 21 OF THESE TESTS THAT WAY, WHICH IS A DROP OF BLOOD, AND ON THAT,
09:16AM 22 A MUCH SUBSTANTIALLY REDUCED COST.

09:16AM 23 SO IT WAS VERY EXCITING FOR THIS NEW LAB AND IT HELD
09:16AM 24 PROMISE FOR THEM.

09:16AM 25 Q. YOU DESCRIBED A PINPRICK OF BLOOD. DO YOU KNOW WHAT PART

09:16AM 1 OF THE BODY THAT BLOOD WAS DRAWN?

09:16AM 2 A. I ACTUALLY NEVER SAW IT. I ASSUME IT WAS FROM THE FINGER.

09:16AM 3 Q. YOU SAID THAT THE TECHNOLOGY WAS VERY EXCITING BECAUSE OF
09:16AM 4 THE SIZE DIFFERENCE BETWEEN THE THERANOS --

09:16AM 5 A. YES.

09:16AM 6 THE COURT: YOU KNOW --

09:16AM 7 THE WITNESS: WHAT WAS THE QUESTION AGAIN, SIR?

09:16AM 8 THE COURT: WHAT WOULD BE HELPFUL, DOCTOR, IS TO LET
09:16AM 9 HIM FINISH THE QUESTION BEFORE YOU ANSWER, AND THAT WOULD HELP
09:16AM 10 THE COURT REPORTER, TOO, TO REPORT EVERYTHING AND THE QUESTION
09:17AM 11 AND ANSWER.

09:17AM 12 THE WITNESS: I APOLOGIZE.

09:17AM 13 THE COURT: NO. THAT'S QUITE ALL RIGHT.

09:17AM 14 I'M GOING TO ASK MR. SCHENK TO ASK HIS QUESTION AGAIN,
09:17AM 15 PLEASE.

09:17AM 16 MR. SCHENK: YES. THANK YOU.

09:17AM 17 Q. YOU DESCRIBED A MEASURE OF EXCITEMENT REGARDING THE
09:17AM 18 THERANOS LAB TESTING BECAUSE OF THE SIZE OF THE BLOOD DRAW AND
09:17AM 19 BECAUSE OF THE COST; IS THAT RIGHT?

09:17AM 20 A. YES.

09:17AM 21 Q. AND AS A RESULT OF THAT EXCITEMENT OR INTEREST, DID YOU
09:17AM 22 SUGGEST THAT SOME OF YOUR PATIENTS GET THEIR LABS DONE AT
09:17AM 23 THERANOS?

09:17AM 24 A. YES.

09:17AM 25 Q. ARE YOU FAMILIAR WITH A PATIENT BY THE NAME OF

09:17AM 1 MEHRL ELLSWORTH?

09:17AM 2 AND LET ME SPELL THAT. IT'S M-E-H-R-L, AND THE LAST NAME

09:17AM 3 IS E-L-L-S-W-O-R-T-H.

09:17AM 4 ARE YOU FAMILIAR WITH DR. ELLSWORTH?

09:17AM 5 A. YES.

09:17AM 6 Q. AND WAS HE A PATIENT OF YOURS AROUND THE 2015 TIMEFRAME?

09:17AM 7 A. YES.

09:17AM 8 MR. SCHENK: YOUR HONOR, MAY I APPROACH?

09:17AM 9 THE COURT: YES.

09:17AM 10 MR. SCHENK: THANK YOU.

09:18AM 11 Q. DOCTOR, I'VE HANDED YOU A BINDER OF EXHIBITS. I WONDER IF

09:18AM 12 YOU'LL TURN TO THE SECOND TAB IN THE BINDER. IT'S EXHIBIT

09:18AM 13 NUMBER 4938.

09:18AM 14 ARE YOU FAMILIAR WITH THE DOCUMENTS LOCATED AT TAB 4938?

09:18AM 15 A. YES.

09:18AM 16 Q. AND WHAT ARE THESE DOCUMENTS?

09:18AM 17 A. THESE ARE LABORATORY RESULTS FROM THERANOS.

09:18AM 18 Q. FOR WHICH INDIVIDUAL?

09:18AM 19 A. DR. ELLSWORTH.

09:18AM 20 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4938.

09:18AM 21 MR. COOPERSMITH: YOUR HONOR, WE OBJECT TO THE FIRST

09:18AM 22 PAGE, WHICH LOOKS TO BE JUST A DECLARATION.

09:18AM 23 ALSO, THOUGH, THE SECOND PAGE AND THE THIRD PAGE.

09:18AM 24 AND REGARDING THE SECOND AND THE THIRD PAGE, YOUR HONOR,

09:19AM 25 WE WOULD POINT YOU TO THE RESULTS SECTION OF BOTH OF THOSE, AND

09:19AM 1 WE OBJECT TO THOSE PAGES UNDER 401 AND 403 AND BASED ON
09:19AM 2 PREVIOUS DISCUSSIONS WITH THE COURT.

09:19AM 3 WE DO NOT OBJECT TO PAGES 4, 5, 6, 7 AND 8 OF THE EXHIBIT.

09:19AM 4 THE COURT: MR. SCHENK.

09:19AM 5 MR. SCHENK: YOUR HONOR, I DO NOT NEED THE FIRST
09:19AM 6 PAGE, SO I WOULD SEEK TO ADMIT PAGES 2 THROUGH 8.

09:19AM 7 WITH REGARD TO PAGES 2 AND 3, THEY ARE RECORDS BOTH OF
09:19AM 8 THERANOS AND OF DR. BURNES'S PRACTICE. THEY WERE DOCUMENTS
09:19AM 9 PROVIDED TO DR. BURNES, AND ALSO TO THE PATIENT AFTER RECEIVING
09:19AM 10 TESTS AT THERANOS, AND THEY ARE AN IMPORTANT PART OF THE STORY
09:20AM 11 THAT BOTH DR. BURNES AND DR. ELLSWORTH CAN TESTIFY TO.

09:20AM 12 MR. COOPERSMITH: YOUR HONOR, I WOULD ALSO POINT THE
09:20AM 13 COURT TO THE REPORT DATES ON PAGES 2 AND 3 AT THE BOTTOM
09:20AM 14 CENTER, AND IT'S IN MARCH OF 2016, AND THAT'S PART OF OUR
09:20AM 15 OBJECTION, YOUR HONOR.

09:20AM 16 THE COURT: ANYTHING ON THAT, MR. SCHENK?

09:20AM 17 MR. SCHENK: NO, YOUR HONOR. THANK YOU.

09:20AM 18 THE COURT: ALL RIGHT. THANK YOU.

09:20AM 19 I'LL ADMIT THESE OVER OBJECTION, AND THE PROBATIVE VALUE
09:20AM 20 OF THESE OUTWEIGH ANY PREJUDICE THAT EXISTS.

09:20AM 21 SO THEY'RE ADMITTED, AND THEY MAY BE PUBLISHED.

09:20AM 22 (GOVERNMENT'S EXHIBIT 4938, PAGES 2 AND 8, WAS RECEIVED.)

09:20AM 23 MR. SCHENK: THANK YOU, YOUR HONOR.

09:20AM 24 Q. IF WE COULD START, DR. BURNES, ON PAGE 7 OF THIS EXHIBIT.

09:21AM 25 YOUR HONOR, MAY I HAVE JUST ONE MOMENT?

09:21AM 1 THE COURT: SURE.

09:21AM 2 (PAUSE IN PROCEEDINGS.)

09:21AM 3 BY MR. SCHENK:

09:21AM 4 Q. DR. BURNES, ON THE SCREEN IN FRONT OF YOU, DO YOU SEE THE
09:21AM 5 EXHIBIT 4938, PAGE 7?

09:21AM 6 A. YES.

09:21AM 7 Q. AND THE PATIENT'S NAME ON THIS VERSION HAS BEEN REDACTED;
09:21AM 8 IS THAT CORRECT?

09:21AM 9 A. YES.

09:21AM 10 Q. THE VERSION THAT YOU HAVE IN FRONT OF YOU, DOES THAT
09:21AM 11 VERSION HAVE THE PATIENT'S NAME?

09:21AM 12 A. YES.

09:21AM 13 Q. WHAT IS THE PATIENT'S NAME?

09:21AM 14 A. MEHRL, M-E-H-R-L, ELLSWORTH, E-L-L-S-W-O-R-T-H.

09:21AM 15 Q. THANK YOU.

09:21AM 16 I'D LIKE TO ASK YOU A FEW QUESTIONS ABOUT THIS DOCUMENT,
09:22AM 17 BUT, FIRST, DID YOU HAVE OCCASION TO ORDER A PSA TEST FOR
09:22AM 18 DR. ELLSWORTH?

09:22AM 19 A. YES.

09:22AM 20 Q. AND PLEASE DESCRIBE THAT TO THE JURY. WHAT WERE THE
09:22AM 21 CIRCUMSTANCES?

09:22AM 22 A. THE PATIENT WAS LEAVING THE COUNTRY IN A COUPLE OF MONTHS
09:22AM 23 FOR MISSIONARY WORK OVERSEAS FOR ABOUT TWO YEARS, AND HIS
09:22AM 24 CHURCH ASKED THAT A RECENT PSA BE OBTAINED.

09:22AM 25 NORMALLY WE DO THAT WITH OUR WELLNESS EXAMS AND ANNUAL

09:22AM 1 PHYSICALS IS OUT OF SEQUENCE THEN.

09:22AM 2 PART OF THE ISSUE IS THAT THAT TEST WAS FAIRLY EXPENSIVE,
09:22AM 3 AND SO THAT'S PART OF THE REASON THAT I WOULD USE THERANOS
09:22AM 4 SOMETIMES.

09:22AM 5 SO AT THIS TIME I SENT DR. ELLSWORTH TO OBTAIN A PSA FOR
09:22AM 6 HIS MISSIONARY CLEARANCE.

09:22AM 7 Q. YOU SAID THAT THE PSA TEST WAS OUT OF SEQUENCE.

09:22AM 8 DO YOU MEAN OUTSIDE OF THE NORMAL ANNUAL PHYSICAL THAT YOU
09:23AM 9 DESCRIBED?

09:23AM 10 A. YES.

09:23AM 11 AND SO INSURANCE WILL NORMALLY COVER IT ABOUT EVERY YEAR
09:23AM 12 OR SO. I GET THE TEST ABOUT EVERY YEAR OR YEAR AND A HALF OR
09:23AM 13 SO FOR MEN OVER 50.

09:23AM 14 I DON'T RECALL EXACTLY THE CIRCUMSTANCES, BUT IT WAS
09:23AM 15 REQUESTED BY THE TIMING OF THIS CHURCH, SO HE WAS PROBABLY
09:23AM 16 GOING TO HAVE TO PAY FOR IT, SO THAT'S WHY WE USED THE LAB.

09:23AM 17 Q. THANK YOU.

09:23AM 18 NOW I'D LIKE TO ASK YOU ABOUT PORTIONS OF THE DOCUMENT.

09:23AM 19 FIRST, AT THE VERY TOP, DO YOU SEE A FAX HEADER? IT'S
09:23AM 20 ALSO ZOOMED IN ON THE SCREEN IF THAT'S EASIER.

09:23AM 21 A. OKAY. YES, UH-HUH.

09:23AM 22 Q. AND WHAT IS THE DATE?

09:23AM 23 A. MAY 16TH, 2015.

09:23AM 24 Q. THANK YOU.

09:23AM 25 AND WAS IT YOUR PRACTICE TO HAVE YOUR PATIENT'S LAB

09:23AM 1 RESULTS FAXED TO YOUR OFFICE?

09:23AM 2 A. YES.

09:23AM 3 Q. WOULD THAT FAX HAVE ARRIVED AT YOUR OFFICE IN ARIZONA?

09:23AM 4 A. YES.

09:23AM 5 Q. I WOULD LIKE TO NOW ZOOM IN ON THE VISIT DATE SECTION.

09:24AM 6 IT'S JUST ABOVE THE SUMMARY OF ABNORMAL RESULTS TABLE.

09:24AM 7 DO YOU SEE THAT?

09:24AM 8 A. YES.

09:24AM 9 Q. AND WHAT IS THE VISIT DATE?

09:24AM 10 A. MAY 14TH, 2015.

09:24AM 11 Q. DO YOU RECALL WHETHER DR. ELLSWORTH HAD SEVERAL PSA TESTS

09:24AM 12 CONDUCTED AT THERANOS?

09:24AM 13 A. YES.

09:24AM 14 Q. AND WAS THIS THE FIRST ONE?

09:24AM 15 A. YES.

09:24AM 16 Q. NOW I'D LIKE TO SHOW YOU UNDER THE SECTION THAT IS TITLED

09:24AM 17 PSA, TOTAL.

09:24AM 18 DO YOU SEE THAT?

09:24AM 19 A. YES.

09:24AM 20 Q. IT SAYS PROSTATE SPECIFIC ANTIGEN TOTAL, AND THEN THERE'S

09:24AM 21 A RESULT.

09:24AM 22 WHAT IS THE RESULT?

09:24AM 23 A. 26.1.

09:24AM 24 Q. WHAT DOES THAT MEAN TO YOU?

09:24AM 25 A. THAT'S ELEVATED SIGNIFICANTLY.

09:24AM 1 Q. AND WHEN YOU SAY "ELEVATED," DO YOU MEAN IN RELATION TO
09:24AM 2 PRIOR SCORES FOR DR. ELLSWORTH?

09:25AM 3 A. NOT ONLY FOR HIS PRIOR SCORES, BUT THAT LEVEL OF ELEVATION
09:25AM 4 IS CONCERNING NO MATTER WHAT HIS PREVIOUS SCORES HAD BEEN.

09:25AM 5 Q. SO IT'S OBJECTIVELY HIGH OR ELEVATED?

09:25AM 6 A. YES.

09:25AM 7 Q. THANK YOU.

09:25AM 8 A. IF I COULD CLARIFY FOR THE COURT AND THE JURY?

09:25AM 9 Q. PLEASE.

09:25AM 10 A. IF HE IS A NEW PATIENT THAT I HAD NEVER SEEN BEFORE AND I
09:25AM 11 GOT THAT RESULT, I WOULD BE VERY, VERY CONCERNED THAT THAT
09:25AM 12 RESULT WAS SO HIGH.

09:25AM 13 Q. AND HOW ABOUT IN THIS SITUATION WHERE DR. ELLSWORTH WAS A
09:25AM 14 PREVIOUS PATIENT OF YOURS? DESCRIBE TO US YOUR REACTION OR
09:25AM 15 RESPONSE TO THIS SCORE FOR DR. ELLSWORTH SPECIFICALLY.

09:25AM 16 A. I FELT MOST LIKELY IT WAS PROBABLY NOT CORRECT.

09:25AM 17 HAVING DONE THIS FOR MANY YEARS, THAT LARGE OF A CHANGE --
09:25AM 18 TRADITIONALLY IT WAS IN THE RANGE OF ABOUT 2, AND EVEN IF HE
09:25AM 19 WAS TO DEVELOP PROSTATE CANCER OVER THE NEXT YEAR OR TWO, THAT
09:25AM 20 WOULD BE AMAZING. I HAVE NEVER SEEN SUCH A RISE IN TWO YEARS.

09:25AM 21 Q. I'M SORRY. YOU SAID YOU NEVER HAVE SEEN?

09:26AM 22 A. SUCH A RISE IN TWO YEAR DUE TO THE PROSTATE CANCER. THERE
09:26AM 23 WERE OTHER REASONS FOR IT TO BE HIGH.

09:26AM 24 Q. WHAT WOULD THOSE OTHER REASONS BE?

09:26AM 25 A. PROSTATE TRAUMA.

09:26AM 1 Q. AND DO YOU KNOW WHETHER THAT WAS PRESENT IN
09:26AM 2 DR. ELLSWORTH'S CASE?
09:26AM 3 A. NO.
09:26AM 4 Q. AND BY "NO," YOU MEAN YOU DON'T KNOW, OR IT WAS NOT
09:26AM 5 PRESENT?
09:26AM 6 A. NO, IT WAS NOT PROSTATE TRAUMA. THE PATIENT WOULD KNOW IF
09:26AM 7 HE HAD PROSTATE TRAUMA.
09:26AM 8 Q. AND SO WAS THERE A BIOLOGICAL EXPLANATION FOR THIS HIGH OR
09:26AM 9 THIS SIGNIFICANT RISE?
09:26AM 10 A. I DO NOT BELIEVE SO.
09:26AM 11 Q. A LITTLE FURTHER DOWN IN THE DOCUMENT IT LOOKS LIKE THERE
09:26AM 12 IS SOME HANDWRITING.
09:26AM 13 DO YOU SEE THAT?
09:26AM 14 A. YES.
09:26AM 15 Q. WHOSE HANDWRITING IS THAT?
09:26AM 16 A. MINE.
09:26AM 17 Q. AND COULD YOU READ THAT TO THE JURY? IT'S ALSO ZOOMED IN
09:26AM 18 ON THE SCREEN IF THAT'S EASIER.
09:26AM 19 A. VERY SIGNIFICANT RISE, RECHECK, MAYBE LAB ERROR.
09:26AM 20 Q. AND TO THE RIGHT OF THERE, THERE LOOKS TO BE A STAMP WITH
09:26AM 21 SOME HANDWRITING.
09:26AM 22 DO YOU SEE THAT?
09:26AM 23 A. YES.
09:26AM 24 Q. WHAT IS THIS?
09:27AM 25 A. THIS IS OUR STANDARD STAMP FOR WHEN WE RECEIVE LAB WORK.

09:27AM 1 IT'S SORT OF -- IT'S A CHECK AND BALANCE.

09:27AM 2 SO INITIALLY IT'S INITIALLED BY WHOEVER RECEIVES IT. THEY
09:27AM 3 PUT THE DATE AND THEN INITIAL IT.

09:27AM 4 THEN IT'S FORWARDED TO ME.

09:27AM 5 AND THEN I WILL INITIAL IT AND THEN DECIDE IF -- I'LL JUST
09:27AM 6 HAVE THE MEDICAL ASSISTANT CALL THE PATIENT IF IT LOOKS NORMAL,
09:27AM 7 OR IF IT'S NOT NORMAL, THEN I'LL CALL THE PATIENT AND TALK TO
09:27AM 8 THEM.

09:27AM 9 Q. AND WE SEE -- I'M SORRY.

09:27AM 10 A. AND THAT LAST THING THAT SAYS NOTIFIED PATIENT, THAT IS
09:27AM 11 WHO NOTIFIES THE PATIENT, EITHER MYSELF OR AN OFFICE STAFF
09:27AM 12 MEMBER.

09:27AM 13 Q. THANK YOU. AND I WAS GOING TO ASK YOU ABOUT THAT.

09:27AM 14 THE NOTIFIED, DOES THAT SAY PT?

09:27AM 15 A. THAT'S ABBREVIATION FOR PATIENT.

09:27AM 16 Q. THERE'S A DATE OF MAY 18TH.

09:27AM 17 WHAT DOES THAT MEAN?

09:27AM 18 A. THAT'S THE DATE THAT I CONTACTED THE PATIENT.

09:27AM 19 Q. THERE'S A LINE WITH THE TITLE WHO AND MAYBE SOME INITIALS.
09:28AM 20 IS THAT RIGHT?

09:28AM 21 A. YES.

09:28AM 22 Q. ARE THOSE YOUR INITIALS?

09:28AM 23 A. YES.

09:28AM 24 Q. AND SO DOES THAT MEAN THAT YOU CONTACTED DR. ELLSWORTH TO
09:28AM 25 DISCUSS THIS SCORE?

09:28AM 1 A. YES.

09:28AM 2 Q. IF YOU'LL NOW TURN ONE PAGE PRIOR IN THE EXHIBIT, PAGE 6.

09:28AM 3 WHAT ARE WE LOOKING AT ON PAGE 6?

09:28AM 4 A. ANOTHER PROSTATE TEST.

09:28AM 5 Q. IF YOU COULD LOOK AT THE VISIT DATE, IT'S JUST ABOVE

09:28AM 6 PSA 3?

09:28AM 7 A. MAY 18, 2015.

09:28AM 8 Q. SO THE FIRST VISIT DATE FROM THE FIRST DOCUMENT WE LOOKED

09:28AM 9 AT WAS MAY 14.

09:28AM 10 DID YOU ASK THAT DR. ELLSWORTH OBTAIN A SECOND PSA TEST

09:28AM 11 AFTER THIS FIRST ONE THAT GENERATED A SCORE OF 26?

09:28AM 12 A. YES.

09:28AM 13 Q. AND IS THIS LAB REPORT THE SCORE AFTER THIS SECOND PSA LAB

09:29AM 14 TEST?

09:29AM 15 A. YES.

09:29AM 16 Q. UNDER PSA, TOTAL, WHAT IS THE SCORE THAT WAS RETURNED THIS

09:29AM 17 TIME?

09:29AM 18 A. 1.71.

09:29AM 19 Q. WHEN YOU RECEIVED THAT SCORE, HOW DID YOU FEEL ABOUT THIS

09:29AM 20 PARTICULAR LAB TEST?

09:29AM 21 A. I FELT IT WAS MUCH MORE CONSISTENT WITH THE EXPECTED

09:29AM 22 RESULT.

09:29AM 23 Q. THERE'S ALSO SOME HANDWRITING ON THIS DOCUMENT.

09:29AM 24 DO YOU SEE THAT?

09:29AM 25 A. YES.

09:29AM 1 Q. DO YOU RECOGNIZE THE HANDWRITING?

09:29AM 2 A. IT IS MINE.

09:29AM 3 Q. AND ALSO IF YOU WOULD READ THIS TO THE JURY. IT'S ON THE

09:29AM 4 SCREEN ZOOMED IN IF THAT'S EASIER.

09:29AM 5 A. MAY 19TH, 2015, "DISCUSS WITH THERANOS CLEARLY SOME FORM

09:29AM 6 OF LAB ERROR OCCURRED AND WILL WORK WITH THEM TO MAKE THIS

09:29AM 7 RIGHT FOR PATIENT AND CONFIRM ACCURACY. MOST LIKELY TESTING IN

09:30AM 8 ERROR FROM MAY 14TH."

09:30AM 9 Q. IN THESE NOTES THERE'S A REFERENCE TO A CONVERSATION WITH

09:30AM 10 THERANOS; IS THAT RIGHT? "DISCUSS WITH THERANOS"?

09:30AM 11 A. YES.

09:30AM 12 Q. AND DO YOU HAVE A RECOLLECTION OF REACHING OUT TO THERANOS

09:30AM 13 AFTER THESE TWO TESTS?

09:30AM 14 A. YES.

09:30AM 15 Q. AND DESCRIBE FOR THE JURY THAT. WHAT DID YOU DO?

09:30AM 16 A. WE REACHED OUT TO TRY AND CONTACT A MEDICAL DIRECTOR ABOUT

09:30AM 17 THE DISCREPANCY.

09:30AM 18 Q. WERE YOU SUCCESSFUL?

09:30AM 19 A. YES. THEY WERE VERY EASY TO CONTACT AND VERY PLEASANT TO

09:30AM 20 TALK TO.

09:30AM 21 Q. AND WHAT DO YOU RECALL FROM THAT COMMUNICATION?

09:30AM 22 DO YOU REMEMBER THE SUBJECT OR THE TOPICS THAT WERE

09:30AM 23 DISCUSSED?

09:30AM 24 A. I DISCUSSED THAT DR. ELLSWORTH'S USUAL RESULTS WERE

09:30AM 25 RUNNING THE RANGE OF ABOUT 2 AND WE GOT THE VALUE OF 26, WHICH

09:30AM 1 I BELIEVED WAS NOT CORRECT.

09:30AM 2 SO THEY HAD DR. ELLSWORTH REPEAT IT FOUR DAYS LATER AND IT
09:30AM 3 CAME BACK WITH A VALUE OF 1.71, WHICH WAS MORE CONSISTENT WITH
09:30AM 4 WHAT WAS EXPECTED.

09:31AM 5 SO I COULDN'T LET HIM GO FOR TWO YEARS WITH ONE LAB VERY
09:31AM 6 HIGH AND NORMAL -- I COULDN'T LET HIM GO WITH ONE LAB VALUE
09:31AM 7 VERY, VERY HIGH AND THE OTHER ONE NORMAL.

09:31AM 8 SO MY POINT WITH TALKING TO THERANOS WAS IF WE COULD
09:31AM 9 REPEAT THIS ONE MORE TIME AND IF WE GOT A THIRD ONE THAT WAS
09:31AM 10 CONSISTENT WITH WHAT I EXPECTED THE RESULT, I FELT COMFORTABLE
09:31AM 11 ENOUGH, I WOULD LET HIM GO.

09:31AM 12 Q. I SEE. DID YOU REQUEST THAT DR. ELLSWORTH HAVE A THIRD
09:31AM 13 PSA TEST?

09:31AM 14 A. YES.

09:31AM 15 Q. JUST BRIEFLY, DO WE ALSO SEE A SIMILAR STAMP THAT YOU
09:31AM 16 DESCRIBED TO THE JURY ON THAT FIRST LAB FORM HERE ON THE SECOND
09:31AM 17 ONE?

09:31AM 18 A. YES.

09:31AM 19 Q. AND DID YOU ALSO DISCUSS WITH DR. ELLSWORTH THIS SECOND
09:31AM 20 SCORE, THE 1.71 SCORE?

09:32AM 21 A. AT SOME POINT WHERE IT SAYS, "NOTIFY PATIENT, L.M." STANDS
09:32AM 22 FOR LEFT MESSAGE.

09:32AM 23 APPARENTLY HE WAS GONE OUT OF TOWN AT THAT TIME.

09:32AM 24 Q. I SEE. SO AT SOME POINT --

09:32AM 25 A. AT SOME POINT WE REACHED HIM.

09:32AM 1 Q. THANK YOU.

09:32AM 2 I'D LIKE YOU TO NOW TURN TO THE FIRST TAB IN THE BINDER.

09:32AM 3 IT'S EXHIBIT 4415.

09:32AM 4 DR. ELLSWORTH -- I'M SORRY. DR. BURNES, IS THIS A CHAIN

09:32AM 5 OF EMAILS THAT YOU WERE NOT ON?

09:32AM 6 A. YES.

09:32AM 7 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4415

09:32AM 8 UNDER 803(6) .

09:32AM 9 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

09:32AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:32AM 11 (GOVERNMENT'S EXHIBIT 4415 WAS RECEIVED IN EVIDENCE.)

09:32AM 12 BY MR. SCHENK:

09:32AM 13 Q. DR. BURNES, IF WE COULD START ON PAGE 8 OF THIS DOCUMENT.

09:33AM 14 DO YOU SEE ON PAGE 8 AT THE BOTTOM AN EMAIL FROM AN

09:33AM 15 INDIVIDUAL NAMED AMELIA AGUIRRE?

09:33AM 16 A. YES.

09:33AM 17 Q. AND THE DATE OF THIS IS MAY 19TH, 2015.

09:33AM 18 DO YOU RECALL MAY 19TH FALLING RIGHT AROUND THIS TIME OF

09:33AM 19 DR. ELLSWORTH'S SECOND PSA TEST?

09:33AM 20 A. YES.

09:33AM 21 Q. AND IN THE EMAIL IT SAYS THAT DR. MARK BURNES CALLED TO

09:33AM 22 DISCUSS RESULTS FROM A PSA THAT WERE VERY HIGH AND A RETEST

09:33AM 23 THAT WAS NORMAL.

09:33AM 24 DO YOU SEE THAT? HIGH ON THE 14TH AND NORMAL ON THE 18TH?

09:33AM 25 A. YES.

09:33AM 1 Q. AND IS THIS THE CONVERSATION THAT YOU WERE JUST DESCRIBING

09:33AM 2 A MOMENT AGO WHEN YOU REACHED OUT TO THERANOS TO DISCUSS

09:33AM 3 DR. ELLSWORTH'S LAB RESULTS?

09:33AM 4 A. COULD YOU REPHRASE THAT, PLEASE?

09:33AM 5 Q. YES. DID YOU, IN FACT, REACH OUT TO THERANOS AROUND THIS

09:33AM 6 TIME --

09:33AM 7 A. YES.

09:33AM 8 Q. -- AROUND MAY 19TH TO DISCUSS DR. ELLSWORTH'S LAB RESULTS?

09:34AM 9 A. YES.

09:34AM 10 Q. AND IF YOU WILL NOW TURN TO THE TOP OF PAGE 9 OF THIS

09:34AM 11 EXHIBIT.

09:34AM 12 THE EMAIL CONTINUES, "BECAUSE OF THIS, HE IS NOT CONVINCED

09:34AM 13 THAT THE RESULTS FROM MAY 14TH BELONG TO HIS PATIENT."

09:34AM 14 THE VERSION ON THE SCREEN IS REDACTED, DR. BURNES.

09:34AM 15 IS THE VERSION IN YOUR BINDER UNREDACTED?

09:34AM 16 A. THAT IS CORRECT.

09:34AM 17 Q. AND WHAT NAME IS IN THE VERSION IN YOUR BINDER?

09:34AM 18 A. M. ELLSWORTH.

09:34AM 19 Q. YOU WERE, IT SAYS, CONCERNED THAT THE RESULTS FROM

09:34AM 20 MAY 14TH MIGHT NOT BELONG TO DR. ELLSWORTH, BUT MAY BELONG TO A

09:34AM 21 DIFFERENT PATIENT; IS THAT CORRECT?

09:34AM 22 A. I DON'T RECOLLECT MY THINKING THAT WAS THE CAUSE AT THE

09:34AM 23 TIME. IT COULD HAVE BEEN, BUT I DON'T REMEMBER THINKING THAT

09:34AM 24 WAS THE ISSUE.

09:34AM 25 Q. AND YOU DON'T HAVE A SPECIFIC RECOLLECTION OF EXPRESSING

09:34AM 1 THAT PARTICULAR CONCERN?

09:34AM 2 A. NO.

09:34AM 3 Q. IF WE COULD NOW TURN A FEW PAGES EARLIER IN THIS EMAIL
09:35AM 4 CHAIN, I'D LIKE TO DRAW YOUR ATTENTION TO PAGE 4.

09:35AM 5 ON PAGE 4, DO YOU SEE AN EMAIL THAT WAS AUTHORED BY
09:35AM 6 SOMEONE NAMED DANIEL YOUNG?

09:35AM 7 A. YES.

09:35AM 8 Q. IN THE EMAIL, DO YOU SEE WHERE DR. YOUNG WRITES,
09:35AM 9 "CHRISTIAN DOES NOT DO THOSE CALLS ANYMORE. DAN FLOREY HELPS
09:35AM 10 WITH THESE NOW"?

09:35AM 11 DO YOU SEE THAT?

09:35AM 12 A. YES.

09:35AM 13 Q. "DAN -- WE DON'T KNOW WHY THE FIRST SAMPLE CAME BACK SO
09:35AM 14 HIGH. IT WAS ACTUALLY RERUN, AND CONFIRMED HIGH ORIGINALLY. A
09:35AM 15 SAMPLE MIXUP IS POSSIBLE AS THE DOCTOR SUGGESTED, BUT HARD TO
09:35AM 16 CONFIRM AT THIS POINT."

09:35AM 17 DO YOU SEE THAT?

09:35AM 18 A. YES.

09:35AM 19 Q. IF NOW YOU'LL TURN TO PAGE 3.

09:35AM 20 ON THE BOTTOM HALF OF THE EMAIL, DO YOU SEE AN EMAIL FROM
09:36AM 21 DAN FLOREY IN -- WE'RE NOW IN JUNE, JUNE 15TH OF 2015?

09:36AM 22 A. YES.

09:36AM 23 Q. DR. BURNES, DID YOU ASK DR. ELLSWORTH TO HAVE A FOLLOWUP
09:36AM 24 PSA TEST, A THIRD ONE, IN JUNE OF 2015?

09:36AM 25 A. YES.

09:36AM 1 Q. IN THIS EMAIL, DO YOU SEE WHERE THERE IS INFORMATION
09:36AM 2 TOWARDS THE BOTTOM, MAY 14TH, WITH AN ACCESSION NUMBER AND A
09:36AM 3 PSA SCORE?
09:36AM 4 A. YES.
09:36AM 5 Q. AND THE PSA SCORE LISTED WAS 26.1; IS THAT RIGHT?
09:36AM 6 A. YES.
09:36AM 7 Q. WAS THAT THE FIRST SCORE THAT WE SAW FOR DR. ELLSWORTH?
09:36AM 8 A. YES.
09:36AM 9 Q. AND ON THIS DOCUMENT, DO YOU SEE A SECOND PSA MAY 18TH
09:36AM 10 WITH A SCORE OF 1.7?
09:36AM 11 A. YES.
09:36AM 12 Q. WAS THAT THE SECOND SCORE FOR DR. ELLSWORTH'S PSA TEST?
09:36AM 13 A. YES.
09:36AM 14 Q. AND IF YOU'LL TURN TO PAGE 4 AT THE VERY TOP.
09:37AM 15 DID DR. ELLSWORTH HAVE A THIRD PSA TEST AT THERANOS ON OR
09:37AM 16 AROUND JUNE 11TH? DO YOU RECALL THAT?
09:37AM 17 A. YES.
09:37AM 18 Q. AND HERE THE SCORE IS LISTED AS A 22.8; IS THAT RIGHT?
09:37AM 19 THE COURT: I'M SORRY. WHAT PAGE?
09:37AM 20 THE WITNESS: YEAH, I'M TRYING TO FIND IT.
09:37AM 21 MR. SCHENK: THE VERY TOP OF PAGE 4.
09:37AM 22 Q. DR. BURNES, DO YOU SEE THAT? IT'S ALSO ON THE SCREEN.
09:37AM 23 A. I SEE IT ON THE SCREEN. I JUST DON'T SEE IT ON THIS PAGE.
09:37AM 24 JUST ABOVE "THANKS, DAN."
09:37AM 25 OH, I'M SORRY. IT'S AT THE VERY, VERY TOP.

09:37AM 1 YES, I SEE IT, 22.8.

09:37AM 2 Q. AND WAS THAT THE THIRD PSA SCORE THAT DR. ELLSWORTH
09:37AM 3 RECEIVED FROM THERANOS?

09:37AM 4 A. YES.

09:37AM 5 Q. JUST A COUPLE MORE EMAILS TO GO THROUGH.

09:38AM 6 IF YOU TURN NOW TO PAGE 3 OF THIS DOCUMENT AT THE VERY
09:38AM 7 TOP.

09:38AM 8 ACTUALLY, LET'S CAPTURE THE FROM LINE, WHICH WOULD BE AT
09:38AM 9 THE VERY BOTTOM OF PAGE 2.

09:38AM 10 IF YOU'LL TURN TO PAGE 2 AT THE VERY, VERY BOTTOM, DO YOU
09:38AM 11 SEE THE BEGINNING OF AN EMAIL?

09:38AM 12 A. YES.

09:38AM 13 Q. AND THE FROM LINE READS SUNNY BALWANI; IS THAT CORRECT?

09:38AM 14 A. YES.

09:38AM 15 Q. AND NOW WE'LL TURN TO PAGE 3 TO CAPTURE THE CONTENT.

09:38AM 16 DO YOU SEE WHERE MR. BALWANI WRITES, "DANIEL. I DO NOT
09:38AM 17 BELIEVE SAMPLE MIX UP IS POSSIBLE BY A REMOTE SHOT IN OUR
09:38AM 18 SYSTEM BUT SINCE THE MOST RECENT VISIT IS ON JUNE 11TH AND
09:38AM 19 SHOULD HAVE THE SAMPLE IN OUR LABS, WE SHOULD BE ABLE TO CHECK
09:38AM 20 THE LABEL ON SAMPLE ACROSS THE ENTIRE SYSTEMS. WE SHOULD START
09:38AM 21 BY RERUNNING THE SAMPLE TO START AND THE WORK BACKWARDS FROM
09:39AM 22 THERE."

09:39AM 23 DO YOU SEE THAT?

09:39AM 24 A. YES.

09:39AM 25 Q. AND THEN THERE'S ANOTHER PARAGRAPH BELOW WHERE MR. BALWANI

09:39AM 1 GIVES FURTHER INSTRUCTIONS.

09:39AM 2 DO YOU SEE THAT ALSO?

09:39AM 3 BEGINNING "TINA."

09:39AM 4 A. YES.

09:39AM 5 Q. NOW WOULD YOU PLEASE TURN TO PAGE 2.

09:39AM 6 ON PAGE 2, THERE'S A RESPONSE FROM DANIEL YOUNG TO

09:39AM 7 SUNNY BALWANI AND OTHERS.

09:39AM 8 DO YOU SEE THAT?

09:39AM 9 A. YES.

09:39AM 10 Q. MR. -- DR. YOUNG WRITES, "THE MOST RECENT SAMPLE WAS

09:39AM 11 FLAGGED FOR HEMOLYSIS AND CLOTTING. THE SAMPLE WAS USED FOR

09:39AM 12 THE PSA RESULT.

09:39AM 13 "PSA FROM VISITS 1 AND 3 WERE RUN ON EDISON. VISIT 2 WAS

09:39AM 14 RUN IN PHOENIX."

09:39AM 15 DO YOU SEE THAT?

09:39AM 16 A. YES.

09:40AM 17 Q. AND FINALLY, "THIS IS LOOKING LIKE EITHER A SAMPLE

09:40AM 18 INTEGRITY ISSUE, OR SOME OTHER INTERFERANT IN THE PATIENT

09:40AM 19 SAMPLE AFFECTED THE PSA TEST ON EDISON."

09:40AM 20 DID I READ THAT CORRECTLY?

09:40AM 21 A. YES.

09:40AM 22 Q. AND IF WE JUST FINISH THIS AND IF YOU'LL TURN TO PAGE 1.

09:40AM 23 DO YOU SEE AT THE VERY BOTTOM WHERE MR. BALWANI WRITES,

09:40AM 24 "IF IT IS THEN WE SHOULD EXPLAIN THIS TO DOC."

09:40AM 25 DO YOU SEE THAT?

09:40AM 1

A. YES.

09:40AM 2

Q. AND, DR. BURNES, DO YOU HAVE A RECOLLECTION OF SOMEONE AT THERANOS TELLING YOU THAT THERE WERE ISSUES WITH THE INTEGRITY OF DR. ELLSWORTH'S SAMPLE?

09:40AM 3

09:40AM 4

09:40AM 5

A. I DON'T RECALL.

09:40AM 6

Q. AT THE VERY TOP THERE ARE TWO EMAILS, FIRST FROM

09:40AM 7

DAN FLOREY TO MR. BALWANI, AND THEN AN EMAIL FROM MR. BALWANI TO ELIZABETH HOLMES.

09:40AM 8

09:40AM 9

DO YOU SEE THOSE TWO EMAILS?

09:41AM 10

A. I SEE THE FIRST ONE FROM DAN TO SUNNY.

09:41AM 11

WHERE IS THE SECOND ONE.

09:41AM 12

Q. LET'S TALK ABOUT THAT ONE, AND THEN I'LL MOVE UP TO THE NEXT ONE.

09:41AM 13

09:41AM 14

A. OKAY.

09:41AM 15

Q. THE ONE FROM MR. FLOREY, DO YOU SEE THAT IT SUMMARIZES A CONVERSATION WITH YOU, WITH SOMEONE NAMED DR. BURNES?

09:41AM 16

09:41AM 17

DO YOU SEE THAT WITHIN THIS EMAIL?

09:41AM 18

A. YES.

09:41AM 19

Q. THE CALL WAS POSITIVE AND IT SOUNDS LIKE YOU DESCRIBE THE THERANOS PLAN AS SOLID.

09:41AM 20

09:41AM 21

DO YOU SEE THAT?

09:41AM 22

A. YES.

09:41AM 23

Q. AND ABOVE THIS EMAIL FROM DAN FLOREY, DO YOU SEE AN EMAIL WITH NO CONTENT, JUST A FORWARD FROM MR. BALWANI TO MS. HOLMES?

09:41AM 24

09:41AM 25

A. YES.

09:41AM 1 Q. THANK YOU.

09:41AM 2 I'D LIKE TO NOW TURN YOU BACK TO THE EXHIBIT WITH THE TEST

09:41AM 3 RESULTS. THAT'S 4938. IF YOU'LL TURN TO PAGE 5.

09:42AM 4 DO YOU SEE ON PAGE 5 A LAB TEST RESULT FOR DR. ELLSWORTH

09:42AM 5 FROM A JUNE 11, 2015 VISIT DATE?

09:42AM 6 A. YES.

09:42AM 7 Q. AND, DR. BURNES, IS THIS THE THIRD THERANOS PSA TEST FOR

09:42AM 8 DR. ELLSWORTH?

09:42AM 9 A. YES.

09:42AM 10 Q. HERE THERE'S A SUMMARY OF ABNORMAL RESULTS AND A PSA,

09:42AM 11 TOTAL.

09:42AM 12 DO YOU SEE THOSE TWO BOXES?

09:42AM 13 A. YES.

09:42AM 14 Q. AND WHAT IS THE PSA SCORE THIS TIME FOR DR. ELLSWORTH?

09:42AM 15 A. 22.8.

09:42AM 16 Q. WHEN YOU RECEIVED THIS AS A THIRD SCORE -- A MOMENT AGO

09:42AM 17 YOU EXPLAINED TO THE JURY THE FIRST WAS QUITE HIGH AND THE

09:42AM 18 SECOND SCORE WAS AS EXPECTED.

09:42AM 19 YOU DIDN'T WANT TO LET DR. ELLSWORTH TRAVEL WITH THESE TWO

09:42AM 20 SCORES, SO YOU WANTED HIM TO HAVE A THIRD?

09:43AM 21 A. YES.

09:43AM 22 Q. A TIEBREAKER.

09:43AM 23 WHEN YOU RECEIVED THIS SCORE OF 22, THEN WHAT WERE YOU

09:43AM 24 THINKING? HOW DID YOU FEEL?

09:43AM 25 A. THERE WAS SOMETHING NOT CORRECT WITH THE LABS.

09:43AM 1 Q. AND WHY DID YOU THINK THAT THERE WAS NOT SOMETHING CORRECT
09:43AM 2 WITH THE LABS AS OPPOSED TO A QUESTION ABOUT DR. ELLSWORTH'S
09:43AM 3 HEALTH?

09:43AM 4 A. THE FIRST IS THAT IT WAS FAR HIGHER THAN WOULD BE EXPECTED
09:43AM 5 EVEN IF HE DEVELOPED CANCER OVER THE PREVIOUS TWO YEARS; THE
09:43AM 6 SECOND WAS THE FACT THAT WE HAD A VALUE ON THE SECOND DRAW THAT
09:43AM 7 WAS CONSISTENT WITH THE EXPECTED RESULT, AND THESE OTHER TWO
09:43AM 8 WERE EXTRAORDINARILY MUCH HIGHER THAT WOULD BE EXPECTED.

09:43AM 9 Q. AT THE VERY BOTTOM OF THIS DOCUMENT, DO YOU SEE A SECTION
09:43AM 10 UNDER THE TITLE "PERFORMING SITE"?

09:43AM 11 A. YES.

09:43AM 12 Q. AND IS THE PERFORMING SITE AN ADDRESS IN NEWARK,
09:43AM 13 CALIFORNIA?

09:43AM 14 A. YES.

09:44AM 15 Q. AND THERE'S ALSO THAT SAME STAMP WITH SOME HANDWRITING; IS
09:44AM 16 THAT RIGHT?

09:44AM 17 A. YES.

09:44AM 18 Q. IT LOOKS LIKE "SPOKE WITH PATIENT ON JUNE 15TH" IS
09:44AM 19 WRITTEN.

09:44AM 20 IS THAT CORRECT?

09:44AM 21 A. YES.

09:44AM 22 Q. AFTER YOU RECEIVED THIS THIRD PSA SCORE FOR DR. ELLSWORTH,
09:44AM 23 WHAT WAS YOUR PLAN? WHAT DID YOU WANT TO DO NEXT?

09:44AM 24 A. WELL, I BECAME VERY DISTRUSTFUL THAT I COULD RELY ON THIS
09:44AM 25 TEST FOR DR. ELLSWORTH BEFORE HE LEFT FOR TWO YEARS.

09:44AM 1 Q. SO WHAT DID YOU DO?

09:44AM 2 A. I ASKED THAT THEY COULD PERFORM THE TEST BY THEIR
09:44AM 3 TRADITIONAL METHOD AT THEIR COSTS, HOWEVER IT'S USUALLY DONE,
09:44AM 4 NOT THE NEW THERANOS WAY, AND I BELIEVE THEY SAID THEY WOULD DO
09:44AM 5 THAT.

09:44AM 6 Q. AND I'M SORRY. YOU SAID THAT YOU WANTED -- YOU MADE A
09:44AM 7 SPECIAL OR A SPECIFIC REQUEST?

09:44AM 8 A. YES. BECAUSE HE HAD ALREADY PAID FOR TWO TESTS, THE FIRST
09:44AM 9 TWO, TO MAKE THIS RIGHT FOR THE PATIENT, I ASKED THAT THEY, AT
09:44AM 10 THEIR EXPENSE, THIS IS FURTHER THEIR ISSUE, THAT THEY WOULD
09:45AM 11 JUST ARRANGE TO HAVE IT DONE BY THE TRADITIONAL METHOD.

09:45AM 12 Q. I SEE. AS OPPOSED TO HOW YOU UNDERSTOOD THE THERANOS DRAW
09:45AM 13 TO BE?

09:45AM 14 A. YES.

09:45AM 15 Q. IF YOU'LL NOW TURN TO PAGE 4 OF THIS EXHIBIT.

09:45AM 16 DR. BURNES, IS THIS NOW A FOURTH THERANOS PSA TEST FOR
09:45AM 17 YOUR PATIENT, DR. ELLSWORTH?

09:45AM 18 A. YES.

09:45AM 19 Q. AND WAS THIS VISIT DATE JUNE 30TH, 2015?

09:45AM 20 DO YOU SEE THAT?

09:45AM 21 A. YES.

09:45AM 22 Q. AND THIS TIME, WHAT IS THE PSA SCORE?

09:45AM 23 A. 0.95.

09:45AM 24 Q. AND UNDER "KEY" TOWARD THE BOTTOM OF THE DOCUMENT, DO YOU
09:45AM 25 SEE A DESCRIPTION OF WHERE THE TEST WAS PROCESSED?

09:45AM 1 A. YES.

09:45AM 2 Q. AND IS THIS ONE NOW BEING PROCESSED IN SCOTTSDALE,

09:45AM 3 ARIZONA?

09:45AM 4 A. YES.

09:45AM 5 Q. AT A THERANOS LABORATORY?

09:45AM 6 A. YES.

09:45AM 7 Q. NOW THAT YOU HAVE THIS FOURTH PSA TEST FROM DR. ELLSWORTH

09:46AM 8 ON WHAT YOU DESCRIBED AS A TRADITIONAL METHOD, HOW DID YOU THEN

09:46AM 9 FEEL ABOUT GIVING SOME MEDICAL ADVICE TO DR. ELLSWORTH BEFORE

09:46AM 10 HE TOOK HIS TRIP?

09:46AM 11 A. I FELT COMFORTABLE AND IT WOULD BE OKAY FOR HIM TO

09:46AM 12 LEAVE --

09:46AM 13 Q. WHY?

09:46AM 14 A. -- FOR TWO YEARS.

09:46AM 15 Q. I'M SORRY. WHY?

09:46AM 16 A. I FELT REASSURED THAT THAT WAS THE EXPECTED VALUE, AND I

09:46AM 17 FELT COMFORTABLE ENOUGH THAT I COULD LET HIM GO WITHOUT FURTHER

09:46AM 18 TESTING.

09:46AM 19 Q. I WOULD LIKE TO SHOW YOU JUST A COUPLE MORE PAGES. IF

09:46AM 20 YOU'LL TURN NOW TO PAGE 3 IN THIS EXHIBIT.

09:46AM 21 DO YOU SEE ON PAGE 3 A DOCUMENT THAT WAS FAXED TO YOUR

09:46AM 22 OFFICE IN MARCH OF 2016?

09:46AM 23 A. I SEE THE DATE AT THE TOP, MARCH 29TH, 2016.

09:46AM 24 Q. THANK YOU.

09:46AM 25 AND WAS THIS NOW THE FOLLOWING YEAR AFTER DR. ELLSWORTH'S

09:47AM 1 FOUR TESTS IN 2015?

09:47AM 2 A. YES, THIS IS ABOUT NINE MONTHS LATER.

09:47AM 3 Q. UNDER REPORT STATUS FINAL, DO YOU SEE WHERE THIS SAYS THIS

09:47AM 4 REPORT CONTAINS CORRECTED RESULTS AT THE VERY TOP ACROSS FROM

09:47AM 5 THE THERANOS LOGO?

09:47AM 6 A. YES, I SEE THAT.

09:47AM 7 Q. AND DID THERANOS PROVIDE TO YOUR OFFICE SOME CORRECTED

09:47AM 8 RESULTS REGARDING DR. ELLSWORTH'S 2015 TESTS?

09:47AM 9 A. YES.

09:47AM 10 Q. AND IN THIS ONE UNDER VISIT DATE, DO YOU SEE THAT IT'S

09:47AM 11 MAY 14TH, 2015?

09:47AM 12 A. YES.

09:47AM 13 Q. WAS THAT DR. ELLSWORTH'S VERY FIRST PSA TEST AT THERANOS?

09:47AM 14 A. YES.

09:47AM 15 Q. UNDER THE PSA, TOTAL BOX, DO YOU SEE ACROSS FROM PROSTATE

09:47AM 16 SPECIFIC ANTIGEN, TOTAL, IT READS VOID -- 26.1?

09:47AM 17 A. YES.

09:47AM 18 Q. AND THEN THERE'S A "C" IN BRACKETS.

09:48AM 19 DO YOU SEE THAT?

09:48AM 20 A. YES.

09:48AM 21 Q. AND UNDER THE KEY TOWARDS THE BOTTOM, DOES "C" STAND FOR

09:48AM 22 CORRECTED?

09:48AM 23 A. YES.

09:48AM 24 Q. WHEN YOU RECEIVED THIS IN MARCH OF 2016, WHAT DID YOU DO

09:48AM 25 WITH IT?

09:48AM 1 A. I SIMPLY FILED IT AWAY.

09:48AM 2 Q. I'M SORRY?

09:48AM 3 A. I SIMPLY FILED IT IN THE CHART.

09:48AM 4 Q. OKAY. LET'S TURN NOW TO PAGE 2 OF THE EXHIBIT.

09:48AM 5 DO YOU SEE ANOTHER CORRECTED LAB RESULT FOR DR. ELLSWORTH

09:48AM 6 ALSO SENT IN MARCH OF 2016?

09:48AM 7 A. WHAT PAGE ARE WE SUPPOSED TO BE ON?

09:48AM 8 Q. PAGE 2.

09:48AM 9 A. OKAY.

09:48AM 10 Q. IS THIS ANOTHER CORRECTED REPORT FROM THERANOS FOR

09:49AM 11 DR. ELLSWORTH THAT YOU RECEIVED IN MARCH OF 2016?

09:49AM 12 A. YES.

09:49AM 13 Q. DOES THIS ONE CORRECT THE JUNE 11TH, 2015 LAB RESULT?

09:49AM 14 A. YES.

09:49AM 15 Q. WAS THAT THE 22.8 PSA SCORE FOR DR. ELLSWORTH?

09:49AM 16 A. YES.

09:49AM 17 Q. AND, AGAIN, DO YOU SEE THAT THE 22.8 IS A CORRECTED VALUE

09:49AM 18 ACCORDING TO THE KEY?

09:49AM 19 A. YES.

09:49AM 20 Q. AND DID YOU DO -- SORT OF TAKE A SIMILAR ACTION WITH THIS

09:49AM 21 DOCUMENT, THAT IS, FILE IT AWAY IN THE CHART?

09:49AM 22 A. YES.

09:49AM 23 Q. AND DID YOU HAVE A CONVERSATION WITH DR. ELLSWORTH AFTER

09:49AM 24 YOU RECEIVED THESE TWO VOIDED OR CORRECTED RESULTS?

09:49AM 25 A. HE WAS OUT OF THE COUNTRY.

09:49AM 1 Q. IF YOU'LL --

09:49AM 2 A. NO.

09:49AM 3 Q. I'M SORRY?

09:49AM 4 A. NO, I DID NOT.

09:49AM 5 Q. IF YOU'LL NOW TURN TO PAGE 8 OF THIS EXHIBIT.

09:50AM 6 DO YOU SEE THE DOCUMENT LOCATED ON PAGE 8 OF THIS EXHIBIT?

09:50AM 7 A. YES.

09:50AM 8 Q. WHAT IS THIS DOCUMENT?

09:50AM 9 A. THIS IS A LABORATORY RESULT.

09:50AM 10 Q. FOR WHICH PATIENT?

09:50AM 11 A. DR. ELLSWORTH.

09:50AM 12 Q. AND ON THE RIGHT SIDE AT THE TOP, DO YOU SEE THE

09:50AM 13 COLLECTION DATE?

09:50AM 14 A. YES, FEBRUARY 28TH, 2017.

09:50AM 15 Q. SO THIS IS NOW A COUPLE OF YEARS AFTER THE FOUR THERANOS

09:50AM 16 TESTS WE HAVE BEEN DISCUSSING?

09:50AM 17 A. YES.

09:50AM 18 Q. AND NOW WHAT IS DR. ELLSWORTH'S PSA SCORE?

09:50AM 19 A. 2.0.

09:50AM 20 Q. THANK YOU.

09:50AM 21 IF WE CAN JUST BRING UP ONE LAST TIME PAGE 7, THE VERY

09:50AM 22 FIRST THERANOS TEST RESULT.

09:50AM 23 DR. BURNES, DO YOU RECALL THIS ONE? THIS IS THE ORIGINAL

09:50AM 24 26.1 FROM THERANOS.

09:50AM 25 A. YES.

09:50AM 1 Q. DO YOU HAVE AN OPINION ON WHETHER THIS TEST WAS ACCURATE
09:50AM 2 OR WAS NOT ACCURATE?

09:50AM 3 A. WHICH TEST ARE WE TALKING ABOUT?

09:51AM 4 Q. THE ONE THAT IS ON THE SCREEN IN FRONT OF YOU, THE 26.1,
09:51AM 5 THE VERY FIRST THERANOS TEST.

09:51AM 6 A. THIS TEST, I BELIEVE, WAS IN ERROR.

09:51AM 7 Q. AND WHY DO YOU SAY THAT?

09:51AM 8 A. IT WAS SO FAR OUT OF RANGE FOR ANY CAUSE SHORT OF TRAUMA
09:51AM 9 THAT IT DIDN'T MAKE ANY SENSE.

09:51AM 10 Q. AND YOU SAID "FOR ANY CAUSE SHORT OF TRAUMA." WERE YOU
09:51AM 11 ALSO ABLE TO RULE OUT TRAUMA?

09:51AM 12 A. TRAUMA IS USUALLY WHEN A PATIENT CANNOT URINATE AND THEY
09:51AM 13 SHOW UP IN AN EMERGENCY ROOM AND THEY TRY TO PASS A CATHETER
09:51AM 14 AND IT TRAUMATIZES THEM -- THEY PUT IN A URINE CATHETER, AND IN
09:51AM 15 THE COURSE OF TRYING TO PASS A CATHETER INTO THE BLADDER,
09:51AM 16 SOMETIMES IT WILL STRIKE THE PROSTATE AND CAUSE TRAUMA AND
09:52AM 17 DAMAGE.

09:52AM 18 Q. AND THAT IS A POTENTIAL CAUSE OF A VERY HIGH PSA SCORE?

09:52AM 19 A. YES. I HAD ONE THAT WAS, LIKE, VALUED AT 60 FROM TRAUMA
09:52AM 20 FROM A CATHETER.

09:52AM 21 Q. WERE YOU ABLE TO RULE OUT THAT POTENTIAL BIOLOGICAL
09:52AM 22 EXPLANATION IN DR. ELLSWORTH'S CASE?

09:52AM 23 A. YES.

09:52AM 24 Q. AND BY RULING THAT OUT, DOES THAT GIVE YOU ADDITIONAL
09:52AM 25 CONFIDENCE REGARDING YOUR CONCLUSION THAT THIS FIRST TEST

09:52AM 1 RESULT WAS NOT ACCURATE?

09:52AM 2 A. YES.

09:52AM 3 MR. SCHENK: YOUR HONOR, MAY I HAVE ONE MOMENT?

09:52AM 4 THE COURT: YES. DISCUSSION.

09:52AM 5 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

09:52AM 6 MR. SCHENK: THANK YOU, DR. BURNES.

09:52AM 7 NO FURTHER QUESTIONS.

09:52AM 8 THE COURT: CROSS-EXAMINATION?

09:53AM 9 **CROSS-EXAMINATION**

09:53AM 10 BY MR. COOPERSMITH:

09:53AM 11 Q. GOOD MORNING, DR. BURNES.

09:53AM 12 A. HELLO.

09:53AM 13 Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI.

09:53AM 14 I'M GOING TO ASK YOU SOME QUESTIONS ABOUT YOUR EXPERIENCE
09:53AM 15 WITH THERANOS. OKAY?

09:53AM 16 SO AS YOU -- I THINK YOU SAID ON DIRECT THAT YOUR PRACTICE
09:53AM 17 IS IN INTERNAL MEDICINE IN THE PHOENIX AREA?

09:53AM 18 A. YES.

09:53AM 19 Q. AND FOR PATIENT MEHRL ELLSWORTH, I THINK YOU SAID HE HAD
09:53AM 20 TO PAY OUT OF POCKET FOR THESE TESTS?

09:53AM 21 A. YES.

09:53AM 22 Q. BECAUSE THEY WERE NOT IN THE NORMAL CYCLE OF PHYSICAL
09:53AM 23 CHECKUPS; IS THAT RIGHT?

09:53AM 24 A. YES.

09:53AM 25 Q. SO BECAUSE OF THAT, DID YOU FIND IT ADVANTAGEOUS FOR YOUR

09:53AM 1 PATIENT THAT THERANOS OFFERED LOW PRICES?

09:54AM 2 A. YES.

09:54AM 3 Q. AND YOU KNEW THAT BECAUSE SOMEONE AT THERANOS HAD TOLD YOU
09:54AM 4 ABOUT THEIR PRICES?

09:54AM 5 A. YES, AND THERE WAS A SHEET THAT WAS PROVIDED THAT SHOWED
09:54AM 6 THE PRICES.

09:54AM 7 Q. OKAY. AND WERE THOSE SHEETS AVAILABLE PUBLICLY AS FAR AS
09:54AM 8 YOU KNOW FOR THERANOS?

09:54AM 9 A. I PRESUME SO.

09:54AM 10 Q. OKAY. AND FOR MOST LABS THAT YOU HAVE EXPERIENCE WITH,
09:54AM 11 SUCH AS LABCORP, ARE THEY PUBLISHING THEIR PRICES ON THEIR
09:54AM 12 WEBSITE OR BEING TRANSPARENT ABOUT THAT?

09:54AM 13 A. NO.

09:54AM 14 Q. OKAY. SO LET'S TALK ABOUT THE LAB RESULTS FOR
09:54AM 15 DR. ELLSWORTH.

09:54AM 16 AND I CALL HIM DR. ELLSWORTH BECAUSE DR. ELLSWORTH IS
09:54AM 17 ACTUALLY A DENTIST; IS THAT RIGHT?

09:54AM 18 A. YES.

09:54AM 19 Q. AND HE WAS A LONG-TIME PATIENT OF YOURS?

09:54AM 20 A. YES.

09:54AM 21 Q. AND THE PSA TEST THAT YOU HAD ORDERED FOR DR. ELLSWORTH,
09:54AM 22 THAT WAS NOT THE FIRST TIME THAT YOU USED THERANOS FOR ONE OF
09:54AM 23 YOUR PATIENTS; CORRECT?

09:55AM 24 A. CORRECT.

09:55AM 25 Q. AND, IN FACT, PRIOR TO DR. ELLSWORTH, YOU HAD BEEN USING

09:55AM 1 THERANOS FOR SOME PATIENTS FOR ABOUT A YEAR PRIOR TO

09:55AM 2 DR. ELLSWORTH'S TESTS?

09:55AM 3 A. YES, THAT'S PROBABLY TRUE.

09:55AM 4 Q. AND FOR THOSE OTHER PATIENTS THAT YOU SENT TO THERANOS,

09:55AM 5 THERE WERE NO OTHER ISSUES; CORRECT?

09:55AM 6 A. NO, NONE THAT I COULD FIND.

09:55AM 7 Q. AND YOU FOUND THE OTHER RESULTS FROM THERANOS, BEFORE THE

09:55AM 8 ELLSWORTH RESULT THAT WE'LL TALK ABOUT IN A MINUTE, TO BE

09:55AM 9 ACCURATE AND RELIABLE AS FAR AS YOU COULD TELL?

09:55AM 10 A. I COULDN'T FIND ANY TESTS THAT WERE CONCERNING.

09:55AM 11 Q. NO TESTS THAT WERE CONCERNING. OKAY.

09:55AM 12 WELL, LET'S TALK ABOUT DR. ELLSWORTH.

09:55AM 13 SO THE GOVERNMENT SHOWED YOU EXHIBIT 4938, WHICH IS A

09:55AM 14 COLLECTION OF LAB RESULTS.

09:55AM 15 DO YOU HAVE THAT IN FRONT OF YOU?

09:55AM 16 A. YES.

09:55AM 17 Q. OKAY. THANK YOU.

09:55AM 18 SO LET'S START WITH THE EARLIEST RESULT IN TIME, AND THAT

09:55AM 19 IS ON PAGE 7 OF THE EXHIBIT.

09:55AM 20 DO YOU SEE THAT?

09:55AM 21 A. YES.

09:55AM 22 Q. AND THAT'S THE VISIT DATE FROM MAY 14TH, 2015?

09:55AM 23 A. YES.

09:55AM 24 Q. OKAY. AND IF YOU LOOK AT THE TOP, JUST TO START OUT WITH,

09:55AM 25 YOU SEE THAT THERE'S A DATE ON THE FAX LINE OF MAY 16TH, 2015?

09:56AM 1 A. YES.

09:56AM 2 Q. AND THAT IS THE DATE THAT YOU RECEIVED THE REPORT FOR THIS

09:56AM 3 PARTICULAR TEST FOR DR. ELLSWORTH; CORRECT?

09:56AM 4 A. YES.

09:56AM 5 Q. AND THEN THERE'S THERANOS FAX SERVER NEXT TO THAT.

09:56AM 6 IF YOU GO TO THE VERY RIGHT, DO YOU SEE THAT THERE'S AN

09:56AM 7 ADDRESS OF THE LAB?

09:56AM 8 A. YES.

09:56AM 9 Q. OKAY. AND ON DIRECT EXAMINATION MR. SCHENK HAD SHOWED YOU

09:56AM 10 SOME NOTATIONS AND SOME OTHER RESULTS THAT INDICATED WHERE THE

09:56AM 11 TEST WAS PERFORMED.

09:56AM 12 DO YOU REMEMBER THAT?

09:56AM 13 A. YES.

09:56AM 14 Q. OKAY. AND ON THIS PAGE WE DON'T SEE THAT PARTICULAR

09:56AM 15 NOTATION; CORRECT?

09:56AM 16 A. NO, NOT THAT I RECOGNIZE.

09:56AM 17 Q. OKAY. AND THEN DO YOU SEE THE ADDRESS OF THE LAB IS ON

09:56AM 18 THE RIGHT WHERE IT IS HIGHLIGHTED ON THE SCREEN, THAT'S IN

09:56AM 19 SCOTTSDALE, ARIZONA?

09:56AM 20 A. YES.

09:56AM 21 Q. AND THERE'S A FAX NUMBER WHICH IS A 650 NUMBER?

09:57AM 22 A. YES.

09:57AM 23 Q. OKAY. DO YOU KNOW, DR. ELLSWORTH, WHERE THIS FAX WAS

09:57AM 24 TRANSMITTED FROM?

09:57AM 25 A. I'M DR. BURNES.

09:57AM 1 Q. I'M SORRY, WHAT DID I CALL YOU?

09:57AM 2 DR. BURNES, OF COURSE. MY MISTAKE.

09:57AM 3 DID YOU -- DO YOU KNOW WHERE THIS FAX WAS TRANSMITTED FROM

09:57AM 4 TO YOUR OFFICE?

09:57AM 5 A. NO.

09:57AM 6 Q. OKAY. ALL RIGHT.

09:57AM 7 LOOKING AT THE RESULT THOUGH, THIS IS THE 26.1 RESULT?

09:57AM 8 A. YES.

09:57AM 9 Q. OKAY. AND WHEN YOU SAW THAT, IT DIDN'T TAKE YOU LONG TO

09:57AM 10 CONCLUDE THAT THERE WAS SOME KIND OF ERROR MOST LIKELY; IS THAT

09:57AM 11 RIGHT?

09:57AM 12 A. I COULDN'T TRUST IT.

09:57AM 13 Q. RIGHT. BECAUSE THAT WAS A LEVEL MUCH HIGHER THAN WHAT YOU

09:57AM 14 WOULD EXPECT FOR A PATIENT LIKE DR. ELLSWORTH?

09:57AM 15 A. YES.

09:57AM 16 Q. OKAY. AND AS A RESULT, YOU HAD ANOTHER TEST DONE; RIGHT?

09:57AM 17 A. YES.

09:57AM 18 Q. SO JUST PAUSING ON THAT FOR A MINUTE, IN YOUR CAREER, YOU

09:58AM 19 HAVE SEEN ON OCCASION THAT LABORATORIES CAN MAKE ERRORS; RIGHT?

09:58AM 20 A. YES.

09:58AM 21 Q. AND, IN FACT, YOU HAD AN EXPERIENCE EARLIER THAN THE

09:58AM 22 DR. ELLSWORTH SITUATION WITH LABCORP MAKING AN ERROR; CORRECT?

09:58AM 23 A. YES.

09:58AM 24 Q. AND WHEN LABCORP MADE AN ERROR, YOU KNOW, YOU DIDN'T TRUST

09:58AM 25 THAT PARTICULAR RESULT EITHER; RIGHT?

09:58AM 1 A. NO.

09:58AM 2 Q. AND I THINK THE ERROR THAT YOU REMEMBER FROM LABCORP

09:58AM 3 WAS -- HAD TO DO WITH AN ASSAY CALLED CREATINE?

09:58AM 4 A. YES.

09:58AM 5 Q. AND WHAT IS CREATINE?

09:58AM 6 A. CREATINE IS A WASTE PRODUCT FROM MUSCLE, LIKE PSA IS FROM

09:58AM 7 THE PROSTATE, AND CREATINE IS FROM MUSCLE, AND IT'S CLEARED

09:58AM 8 FROM THE BODY AS A WASTE PRODUCT THROUGH THE KIDNEY.

09:58AM 9 SO IT'S A VERY SIMPLE WAY ON THE LAB TEST TO DETERMINE

09:58AM 10 ROUGH KIDNEY FUNCTION.

09:58AM 11 Q. OKAY. AND WHEN THAT ERROR OCCURRED WITH LABCORP, DID YOU

09:58AM 12 MAKE A CONCLUSION THAT LABCORP WAS INCAPABLE OF PRODUCING

09:59AM 13 ACCURATE TESTS FOR YOUR PATIENTS?

09:59AM 14 A. NO, BUT IT NEEDED TO BE LOOKED INTO.

09:59AM 15 Q. OKAY. AND DO YOU KNOW -- OTHER THAN THAT ERROR THAT YOU

09:59AM 16 PERSONALLY EXPERIENCED WITH LABCORP WITH THE PATIENT, DO YOU

09:59AM 17 KNOW HOW MANY OTHER ERRORS THAT LABCORP MAKES OVER TIME WITH

09:59AM 18 OTHER PATIENTS?

09:59AM 19 A. THEY'RE RARE. SOMETIMES IT MIGHT BE IMPOSSIBLE TO CATCH

09:59AM 20 THEM. BUT THEY ARE VERY RARE.

09:59AM 21 Q. OKAY. BUT LABS DO MAKE ERRORS?

09:59AM 22 A. YES.

09:59AM 23 Q. AND THAT COULD BE CAUSED FROM A VARIETY OF REASONS; RIGHT?

09:59AM 24 A. YES.

09:59AM 25 Q. AND, FOR EXAMPLE, LIKE AN ERROR IN THE SAMPLE COLLECTION

09:59AM 1 COULD BE A REASON?

09:59AM 2 A. YES.

09:59AM 3 Q. AND AN ISSUE WITH THE SAMPLE INTEGRITY COULD BE A REASON?

09:59AM 4 A. YES.

09:59AM 5 Q. AND AN ISSUE WITH THE WAY THE LABORATORY USES REAGENTS

09:59AM 6 COULD BE A REASON?

09:59AM 7 A. YES.

09:59AM 8 Q. OR A MISTAKE USING EXPIRED REAGENTS COULD BE A REASON?

09:59AM 9 A. YES.

09:59AM 10 Q. AND MANY OTHER REASONS THAT WE COULD THINK OF IF WE ALL

09:59AM 11 HAD THE TIME; RIGHT?

09:59AM 12 A. YES.

09:59AM 13 Q. SO LET'S GO BACK TO THE EXHIBIT, WHICH IS EXHIBIT 4938.

10:00AM 14 AND DO YOU SEE ON PAGE 6 THERE'S A NOTATION ERROR IN YOUR

10:00AM 15 HANDWRITING FOR MAY 19TH, 2015? I THINK YOU READ THAT DURING

10:00AM 16 YOUR DIRECT EXAMINATION.

10:00AM 17 DO YOU REMEMBER THAT?

10:00AM 18 A. YES.

10:00AM 19 Q. AND SO YOU HAD A CONVERSATION WITH THE LAB; IS THAT

10:00AM 20 CORRECT?

10:00AM 21 A. YES.

10:00AM 22 Q. OKAY. AND I THINK YOU FOUND -- YOU SAID YOU FOUND THEM

10:00AM 23 PLEASANT TO TALK TO?

10:00AM 24 A. YES.

10:00AM 25 Q. AND THEY WEREN'T AGGRESSIVE OR COMBATIVE OR ANYTHING LIKE

10:00AM 1 THAT?

10:00AM 2 A. NO.

10:00AM 3 Q. OKAY. AND IF YOU GO TO EXHIBIT 4415, WHICH IS THE OTHER

10:00AM 4 EXHIBIT THAT YOU LOOKED AT ON DIRECT.

10:00AM 5 A. WHICH PAGE?

10:00AM 6 Q. I'M SORRY. IT'S ON PAGE 8 IS WHAT I'M GOING TO TALK

10:01AM 7 ABOUT.

10:01AM 8 AND DO YOU HAVE THAT PAGE, DR. BURNES?

10:01AM 9 A. YES.

10:01AM 10 Q. OKAY. AND YOU SEE THAT THERE'S AN EMAIL FROM

10:01AM 11 AMELIA AGUIRRE AT THE BOTTOM?

10:01AM 12 A. OH.

10:01AM 13 Q. YES. THANK YOU.

10:01AM 14 AND DO YOU SEE THAT MS. AGUIRRE REPORTS THAT YOU HAD

10:01AM 15 CALLED TO TALK ABOUT THE PSA RESULTS; RIGHT?

10:01AM 16 A. YES.

10:01AM 17 Q. AND THAT IS THAT MAY 9TH CALL THAT WE SAW THAT YOU HAD

10:01AM 18 NOTATED ON THE LAB RESULT?

10:01AM 19 A. YES.

10:01AM 20 Q. AND THIS IS THE PERSON THAT YOU FOUND TO BE PLEASANT WHEN

10:01AM 21 YOU CALLED THAT FIRST TIME; RIGHTS?

10:01AM 22 A. YES.

10:01AM 23 Q. OKAY. AND WHAT -- WHEN YOU TALKED TO MS. AGUIRRE, I THINK

10:01AM 24 YOU SAID ON DIRECT THAT YOU THOUGHT IT WOULD BE WISE TO GET THE

10:01AM 25 THIRD TEST FOR DR. ELLSWORTH?

10:01AM 1 A. YES.

10:01AM 2 Q. IS THAT RIGHT?

10:01AM 3 AND THEN YOU DID THAT; RIGHT?

10:01AM 4 A. YES.

10:01AM 5 Q. IF YOU GO BACK TO THE OTHER EXHIBIT, 4938, AND THEN

10:02AM 6 PAGE 3. I'M SORRY. PAGE 5.

10:02AM 7 AND THIS IS THE THIRD RESULT; IS THAT CORRECT?

10:02AM 8 A. YES.

10:02AM 9 Q. AND THEN YOU HAD ANOTHER CONVERSATION WITH A THERANOS

10:02AM 10 REPRESENTATIVE AFTER THAT TEST; IS THAT RIGHT?

10:02AM 11 A. YES.

10:02AM 12 Q. AND IF YOU GO BACK TO EXHIBIT 4415, THIS TIME YOU SPOKE TO

10:02AM 13 THE LAB DIRECTOR? THIS TIME YOU SPOKE TO THE LAB DIRECTOR?

10:02AM 14 A. YES.

10:02AM 15 Q. AND THAT WAS DR. DANIEL YOUNG?

10:03AM 16 A. I BELIEVE SO. I ASKED FOR THE NATIONAL LAB DIRECTOR.

10:03AM 17 Q. OKAY. AND YOU WERE CONNECTED WITH DR. YOUNG?

10:03AM 18 A. I BELIEVE SO. I DON'T REMEMBER THE NAME ITSELF.

10:03AM 19 Q. SO WE'LL CALL HIM THE LAB DIRECTOR IN THAT CASE.

10:03AM 20 SO THE LAB DIRECTOR THAT YOU TALKED TO, YOU UNDERSTAND

10:03AM 21 THAT WAS HIS POSITION?

10:03AM 22 A. YES.

10:03AM 23 Q. AND THE LAB DIRECTOR WAS ALSO PLEASANT AND RESPONSIVE TO

10:03AM 24 YOUR CONCERNS?

10:03AM 25 A. YES.

10:03AM 1 Q. AND I THINK YOU SAID ON DIRECT THAT YOU DON'T RECALL
10:03AM 2 WHETHER HE EXPLAINED IT WAS, IN HIS VIEW, A SAMPLE INTEGRITY
10:03AM 3 ISSUE?
10:03AM 4 A. I DON'T RECALL THAT.
10:03AM 5 Q. OKAY. YOU DON'T RECALL IT EITHER WAY?
10:03AM 6 A. YES, I DON'T RECALL EXACTLY. I DON'T REALLY TRULY RECALL,
10:03AM 7 BUT I WOULDN'T ASSUME THAT THAT WAS A PATIENT MIXUP.
10:03AM 8 Q. OKAY. AND PUTTING ASIDE THE PATIENT MIXUP -- WELL, LET'S
10:03AM 9 TALK ABOUT THAT FOR A MINUTE. SO ONE POSSIBLE ERROR A LAB
10:03AM 10 COULD MAKE IS THAT THEY COULD SWITCH THE SAMPLE AND YOU'RE
10:03AM 11 GETTING RESULTS FOR THE WRONG PATIENT; RIGHT?
10:03AM 12 A. YES.
10:03AM 13 Q. AND YOU DIDN'T THINK THAT HAPPENED HERE?
10:03AM 14 A. I DIDN'T BELIEVE SO.
10:04AM 15 Q. OKAY.
10:04AM 16 A. BUT IT'S POSSIBLE.
10:04AM 17 Q. AND WHEN YOU TALKED TO THE LAB DIRECTOR AFTER THAT THIRD
10:04AM 18 TEST, THAT LAB DIRECTOR DIDN'T TELL YOU THAT THE EXPLANATION
10:04AM 19 WAS SAMPLE MIXUP; RIGHT?
10:04AM 20 A. NO.
10:04AM 21 Q. OKAY. AND YOU DON'T REMEMBER WHETHER THE EXPLANATION HAD
10:04AM 22 TO DO WITH THE SAMPLE INTEGRITY OF DR. ELLSWORTH'S SAMPLE?
10:04AM 23 A. COULD YOU REPHRASE THAT QUESTION?
10:04AM 24 Q. SURE. DO YOU REMEMBER ONE WAY OR THE OTHER WHETHER THE
10:04AM 25 LAB DIRECTOR TOLD YOU THAT HE THOUGHT THE PROBLEM HERE WAS A

10:04AM 1 SAMPLE INTEGRITY ISSUE?

10:04AM 2 A. I BELIEVE I WOULD ACCEPT THAT BECAUSE I DIDN'T THINK -- IT

10:04AM 3 WOULD BE VERY, VERY UNLIKELY TO HAVE LABS SWITCHED TWICE.

10:04AM 4 Q. AND THAT ISSUE OF SAMPLE INTEGRITY, THAT WOULD BE A

10:04AM 5 PLAUSIBLE EXPLANATION FOR WHY THESE RESULTS SEEMED OFF?

10:04AM 6 A. IT COULD BE.

10:04AM 7 Q. OKAY. AND IF WE JUST STAY WITH EXHIBIT 4415 FOR A MINUTE

10:05AM 8 AND YOU GO TO PAGE 2.

10:05AM 9 THERE'S AN EMAIL FROM DANIEL YOUNG TO MR. BALWANI AND

10:05AM 10 TINA LIN AND OTHERS.

10:05AM 11 AND THAT FIRST LINE SAYS, "THE MOST RECENT SAMPLE (EDTA

10:05AM 12 PCTN) WAS FLAGGED FOR HEMOLYSIS AND CLOTTING. THIS SAMPLE WAS

10:05AM 13 USED FOR THE PSA RESULT."

10:05AM 14 DO YOU SEE THAT?

10:05AM 15 A. YES.

10:05AM 16 Q. AND SO THIS WAS THE INTERNAL EXPLANATION THAT DR. YOUNG

10:05AM 17 WAS GIVING; IS THAT RIGHT?

10:05AM 18 A. I PRESUME SO. I WASN'T MADE AWARE OF THAT AT THAT TIME.

10:05AM 19 Q. RIGHT. BUT YOU UNDERSTAND THAT THIS IS AN INTERNAL EMAIL

10:05AM 20 THAT YOU'RE NOT COPIED ON; RIGHT?

10:05AM 21 A. YES.

10:05AM 22 Q. AND THAT WOULD BE A MISTAKE THAT THE LAB MADE, TO BE

10:05AM 23 CLEAR, IF THEY HAD NOTICED HEMOLYSIS AND CLOTTING, BUT USED THE

10:06AM 24 SAMPLE FOR PATIENT TESTING ANYWAY; RIGHT?

10:06AM 25 MR. SCHENK: OBJECTION. FOUNDATION.

10:06AM 1 THE COURT: DO YOU WANT TO LAY A FOUNDATION AS TO
10:06AM 2 HIS KNOWLEDGE, IF HE RECALLS?

10:06AM 3 MR. COOPERSMITH: SURE.

10:06AM 4 Q. DR. BURNES, LET ME JUST ASK YOU AS CLEAR AS I CAN, IF A
10:06AM 5 LAB NOTICES THAT THERE IS HEMOLYSIS AND CLOTTING IN A SAMPLE,
10:06AM 6 DO YOU AGREE THAT THEY SHOULD NOT THEN GO FORWARD AND USE THAT
10:06AM 7 FOR THE LAB TEST?

10:06AM 8 A. I'M AN EXPERT IN INTERPRETING RESULTS, BUT TO BE HONEST,
10:06AM 9 IT'S BEEN 30 YEARS SINCE I WAS IN RESIDENCY AND THE MECHANICS
10:06AM 10 OF HOW THINGS ARE DONE I DON'T RECALL EXACTLY.

10:06AM 11 Q. OKAY. BUT DOES THAT SOUND CORRECT TO YOU?

10:06AM 12 A. YES.

10:06AM 13 Q. OKAY.

10:06AM 14 MR. SCHENK: OBJECTION. MOVE TO STRIKE.

10:06AM 15 THE COURT: SUSTAINED. LACK OF FOUNDATION.

10:06AM 16 THAT LAST RESPONSE, THE ANSWER IS STRICKEN, LADIES AND
10:06AM 17 GENTLEMEN.

10:06AM 18 YOU CAN ASK ANOTHER QUESTION.

10:06AM 19 MR. COOPERSMITH: OKAY. THANKS, YOUR HONOR.

10:06AM 20 Q. SO LET'S GO TO PAGE 3 OF THE EXHIBIT.

10:07AM 21 ACTUALLY, WE CAN START ON THE VERY, VERY BOTTOM OF PAGE 2,
10:07AM 22 JUST SO WE SEE, AGAIN, THE EMAIL.

10:07AM 23 THIS IS AN EMAIL FROM MR. BALWANI.

10:07AM 24 DO YOU SEE THAT?

10:07AM 25 A. YES.

10:07AM 1 Q. OKAY. AND THEN GOING TO THE NEXT PAGE, JUST TO SEE THE
10:07AM 2 CONTENT.

10:07AM 3 SO MR. BALWANI'S FIRST REACTION WAS, "TINA. CAN YOU
10:07AM 4 INVESTIGATE THIS?"

10:07AM 5 DO YOU SEE THAT?

10:07AM 6 A. YES.

10:07AM 7 Q. AND THEN THE NEXT LINE SAYS, "DANIEL. I DO NOT BELIEVE
10:07AM 8 SAMPLE MIXUP IS POSSIBLE BY A REMOTE SHOT IN OUR SYSTEM BUT
10:07AM 9 SINCE THE MOST RECENT VISIT IS ON 6/11 AND SHOULD HAVE THE
10:07AM 10 SAMPLE IN OUR LABS, WE SHOULD BE ABLE TO CHECK THE LABEL ON
10:07AM 11 SAMPLE ACROSS THE ENTIRE SYSTEMS."

10:07AM 12 AND THEN IT GOES ON. "WE SHOULD START BY RERUNNING THE
10:07AM 13 SAMPLE TO START AND THE WORK BACKWARDS FROM THERE."

10:07AM 14 DO YOU SEE THAT?

10:07AM 15 A. YES.

10:07AM 16 Q. OKAY. SO READING THIS ON THE PAGE, AND I UNDERSTAND YOU
10:07AM 17 WEREN'T PART OF THIS EMAIL, BUT IT APPEARS TO YOU THAT
10:08AM 18 MR. BALWANI WAS JUST TRYING TO MAKE HIS LAB STAFF GET TO THE
10:08AM 19 BOTTOM OF THIS; RIGHT?

10:08AM 20 MR. SCHENK: OBJECTION. CALLS FOR SPECULATION.

10:08AM 21 THE COURT: SUSTAINED.

10:08AM 22 BY MR. COOPERSMITH:

10:08AM 23 Q. WITHOUT ASKING THE QUESTION, YOU SEE THE WORDS ON THE
10:08AM 24 PAGES I JUST READ; RIGHT?

10:08AM 25 A. YES.

10:08AM 1 Q. OKAY. AND WOULD YOU EXPECT A LAB LIKE THERANOS TO HAVE A
10:08AM 2 SYSTEM WHERE YOU COULD ACTUALLY DO THE THINGS THAT MR. BALWANI
10:08AM 3 WAS ASKING TO BE CHECKED?

10:08AM 4 MR. SCHENK: OBJECTION. SPECULATION. FOUNDATION.

10:08AM 5 MR. COOPERSMITH: I'M ASKING FOR HIS PERSONAL
10:08AM 6 KNOWLEDGE WHAT HE WOULD EXPECT IN HIS EXPERIENCE.

10:08AM 7 THE COURT: WELL, HE TOLD US EARLIER THAT IT'S BEEN
10:08AM 8 30 YEARS SINCE HE'S BEEN INVOLVED IN THIS. I THINK THERE'S A
10:08AM 9 LACK OF FOUNDATION, UNLESS YOU CAN LAY ONE.

10:08AM 10 MR. COOPERSMITH: OKAY. I WILL DO THAT, YOUR HONOR.

10:08AM 11 Q. DR. BURNES, EVEN THOUGH YOU DON'T WORK IN THE LABORATORY
10:08AM 12 INDUSTRY, YOU'RE A MEDICAL DOCTOR, YOU HAVE SOME KNOWLEDGE,
10:08AM 13 EVEN IF IT'S OLD, ABOUT HOW LABORATORIES ARE SUPPOSED TO
10:08AM 14 OPERATE; IS THAT FAIR?

10:08AM 15 A. YES.

10:08AM 16 Q. OKAY. AND ONE THING THAT I WOULD -- IS IT FAIR TO SAY
10:08AM 17 THAT YOU WOULD EXPECT A LABORATORY TO KEEP RECORDS OF THE
10:09AM 18 PATIENT TESTING THAT THEY HAVE GOING ON?

10:09AM 19 MR. SCHENK: OBJECTION. FOUNDATION. IT CALLS FOR
10:09AM 20 SPECULATION, AND RELEVANCE FROM THIS WITNESS.

10:09AM 21 THE COURT: I'LL SUSTAIN THE 104 OBJECTION.

10:09AM 22 MR. COOPERSMITH: OKAY.

10:09AM 23 Q. WELL, LET ME JUST ASK YOUR PERSONAL KNOWLEDGE, DR. BURNES.
10:09AM 24 OVER YOUR CAREER ORDERING LAB TESTS, HAVE YOU HAD OCCASION
10:09AM 25 TO, EVEN ON MANY OCCASIONS, TO TALK TO PEOPLE WHO WORK AT

10:09AM 1 CLINICAL LABORATORIES?

10:09AM 2 A. NOT OFTEN, TO BE HONEST.

10:09AM 3 Q. OKAY. BUT WHEN YOU DO, YOU INTERACT WITH LAB STAFF; IS
10:09AM 4 THAT FAIR?

10:09AM 5 A. ONLY MY MEDICAL ASSISTANT.

10:09AM 6 Q. IN OTHER WORDS -- LET ME ASK A CLEARER QUESTION. YOU KNOW
10:09AM 7 HOW YOU HAD THOSE CALLS WITH THERANOS PERSONNEL THAT WE JUST
10:09AM 8 DISCUSSED?

10:09AM 9 A. YES.

10:09AM 10 Q. AND AT OTHER TIMES, EVEN WITH OTHER LABS, YOU'VE HAD, OVER
10:09AM 11 TIME, EVEN IF IT'S NOT THAT OFTEN, YOU'VE HAD QUESTIONS OR
10:10AM 12 COMMENTS, YOU HAVE HAD CONVERSATIONS WITH OTHER PEOPLE WHO WORK
10:10AM 13 AT DIFFERENT LABORATORIES?

10:10AM 14 A. TO BE HONEST, VERY INFREQUENTLY, AND MOSTLY BECAUSE THEY
10:10AM 15 WEREN'T AS EASY TO ANSWER THE PHONE AS THERANOS WAS.

10:10AM 16 Q. OKAY.

10:10AM 17 A. IT'S VERY DIFFICULT TO GET AHOLD OF SOMEBODY AT, LIKE,
10:10AM 18 LABCORP.

10:10AM 19 Q. I SEE. IN THE THERANOS CASE IT WAS EASY TO GET AHOLD OF
10:10AM 20 SOMEONE?

10:10AM 21 A. YES, IT WAS. THAT'S WHY I REMEMBER IT SO WELL.

10:10AM 22 Q. UNDERSTOOD. THANK YOU.

10:10AM 23 AND THEN IF WE CONTINUE ON PAGE 3 AT 4415, YOU SEE THAT
10:10AM 24 LAST PARAGRAPH OF THE EMAIL THAT WE WERE READING SAYS, "TINA.
10:10AM 25 CAN YOU PLEASE OWN THIS AND UPDATE ME IN REALTIME.

10:10AM 1 "MAX. CAN U FREE UP YOUR TIME AND START TRACKING THIS
10:10AM 2 SAMPLE AND AA AND MAKE SURE EVERYTHING CHECKS OUT THERE. HAVE
10:10AM 3 SOMEONE PHYSICALLY LOOK AT LABELS TO MAKE SURE LABELS MATCH
10:10AM 4 WITH WHAT WAS DRAWN AT PSC AND THE ONE PRINTED IN LAB IF
10:11AM 5 PRINTED IN LAB."
10:11AM 6 DO YOU SEE THAT?
10:11AM 7 A. YES.
10:11AM 8 Q. AND DO YOU UNDERSTAND THAT THAT WAS MR. BALWANI GIVING
10:11AM 9 THAT DIRECTION; CORRECT?
10:11AM 10 A. YES.
10:11AM 11 Q. IF YOU GO TO PAGE 6, THERE'S AN EMAIL FROM MAY 19TH.
10:11AM 12 DO YOU SEE THAT?
10:11AM 13 A. YES.
10:11AM 14 Q. FROM CATHERINE HUNKLER.
10:11AM 15 DO YOU SEE THAT?
10:11AM 16 A. YES.
10:11AM 17 Q. AND THEN THE CONTENT THERE SAYS, "THE TUBE BARCODED," AND
10:11AM 18 THEN IT HAS A BAR CODE NUMBER, "HAD A BIG CLOT IN IT -- MIGHT
10:11AM 19 THIS HAVE AFFECTED RESULTS IF NOT CAUGHT AT THE INITIAL RUN?"
10:11AM 20 DO YOU SEE THAT?
10:11AM 21 A. YES.
10:11AM 22 Q. AND SO YOU UNDERSTAND THAT THIS IS AN INTERNAL EMAIL FROM
10:11AM 23 THERANOS DISCUSSING THE ISSUE OF A CLOT IN THE COLLECTION TUBE.
10:11AM 24 IS THAT FAIR?
10:11AM 25 A. YES.

10:11AM 1 Q. OKAY.

10:12AM 2 MAY I HAVE A MOMENT, YOUR HONOR?

10:12AM 3 THE COURT: YES.

10:12AM 4 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

10:12AM 5 MR. COOPERSMITH: NO FURTHER QUESTIONS, YOUR HONOR.

10:12AM 6 THE COURT: REDIRECT?

10:13AM 7 **REDIRECT EXAMINATION**

10:13AM 8 BY MR. SCHENK:

10:13AM 9 Q. GOOD MORNING AGAIN, DOCTOR.

10:13AM 10 MR. COOPERSMITH ASKED YOU SOME QUESTIONS REGARDING YOUR

10:13AM 11 EXPERIENCE WITH LABCORP AND THE CREATINE ASSAY.

10:13AM 12 DO YOU RECALL THAT DISCUSSION?

10:13AM 13 A. YES.

10:13AM 14 Q. AND I THINK YOU SAID YOU HAD AN EXPERIENCE WHERE THERE

10:13AM 15 WERE RESULTS THAT YOU QUESTIONED THAT CAME FROM LABCORP; IS

10:13AM 16 THAT RIGHT?

10:13AM 17 A. IT WAS MULTIPLE LABS.

10:13AM 18 Q. I'M SORRY. IT WAS MULTIPLE LABS?

10:13AM 19 A. IT WAS ABOUT FOUR IN ONE WEEK.

10:13AM 20 Q. NOT JUST LABCORP, OTHER --

10:13AM 21 A. IT WAS JUST LABCORP.

10:13AM 22 Q. I SEE. MULTIPLE LAB RESULTS FROM LABCORP ALL INVOLVING

10:13AM 23 CREATINE; IS THAT CORRECT?

10:13AM 24 A. YES.

10:13AM 25 Q. IN THIS INSTANCE WHEN YOU HAD THERANOS RERUN THE SAMPLE,

10:13AM 1 THE FIRST ONE WE'VE TALKED ABOUT WAS IN THE 20'S AND WAS HIGH;
10:13AM 2 CORRECT?
10:13AM 3 A. YES.
10:13AM 4 Q. AND THE SECOND ONE WAS WHAT YOU WOULD HAVE EXPECTED, WAS
10:13AM 5 WITHIN THE REFERENCE RANGE; IS THAT RIGHT?
10:13AM 6 A. YES.
10:13AM 7 Q. AND THEN THERANOS, AT YOUR REQUEST, RERAN IT A THIRD TIME.
10:14AM 8 DO YOU RECALL WHAT THAT SCORE WAS, THE THIRD ONE?
10:14AM 9 A. I BELIEVE THAT WAS ABOUT A 22.
10:14AM 10 Q. AND WHAT CONCLUSIONS DID YOU DRAW ABOUT THAT?
10:14AM 11 A. THE ODDS WERE THAT THERE WAS SOMETHING WRONG WITH THE LAB
10:14AM 12 TEST.
10:14AM 13 Q. SO WHEN YOU POINTED OUT TO THEM THAT THE FIRST SCORE WAS
10:14AM 14 SOMETHING THAT YOU HAD QUESTIONS ABOUT AND YOU DID THIS
10:14AM 15 TIEBREAKER BEFORE SENDING DR. ELLSWORTH ON HIS TRIP, THE THIRD
10:14AM 16 SCORE THAT CAME BACK SIMILARLY CAUSED YOU TO HAVE SOME CONCERNS
10:14AM 17 ABOUT WHETHER THAT THIRD SCORE WAS ACCURATE OR NOT; IS THAT
10:14AM 18 RIGHT?
10:14AM 19 A. YES.
10:14AM 20 Q. EVEN AFTER YOU BROUGHT TO THEIR ATTENTION THAT THERE MIGHT
10:14AM 21 BE PROBLEMS?
10:14AM 22 A. YES.
10:14AM 23 Q. THANK YOU.
10:14AM 24 NO FURTHER QUESTIONS.
10:14AM 25 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

10:14AM 1 THE COURT: MAY THIS WITNESS BE EXCUSED?

10:14AM 2 MR. COOPERSMITH: YES, YOUR HONOR.

10:14AM 3 MR. SCHENK: YES.

10:14AM 4 THE COURT: THANK YOU, SIR. YOU'RE EXCUSED. THANK

10:14AM 5 YOU.

10:15AM 6 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

10:15AM 7 MR. SCHENK: THE UNITED STATES CALLS

10:15AM 8 DR. MEHRL ELLSWORTH.

10:15AM 9 THE COURT: THANK YOU.

10:15AM 10 FOLKS, YOU CAN STAND UP AND STRETCH IF YOU WOULD LIKE

10:15AM 11 WHILE DR. ELLSWORTH COMES IN.

10:15AM 12 (STRETCHING.)

10:15AM 13 THE COURT: GOOD MORNING, SIR.

10:15AM 14 IF YOU COULD STAND OVER HERE AND RAISE YOUR RIGHT HAND

10:15AM 15 WHILE YOU FACE OUR COURTROOM DEPUTY, SHE HAS A QUESTION FOR

10:15AM 16 YOU.

10:15AM 17 THE WITNESS: OKAY.

10:15AM 18 **(GOVERNMENT'S WITNESS, MEHRL ELLSWORTH, WAS SWORN.)**

10:15AM 19 THE WITNESS: YES.

10:15AM 20 THE CLERK: THANK YOU.

10:16AM 21 THE COURT: WE INVITE YOU TO HAVE A SEAT HERE, SIR,

10:16AM 22 AND MAKE YOURSELF COMFORTABLE.

10:16AM 23 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

10:16AM 24 NEED.

10:16AM 25 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR

10:16AM 1 NAME AND THEN SPELL IT, PLEASE.

10:16AM 2 THE WITNESS: MEHRL K. ELLSWORTH, DR. ELLSWORTH.

10:16AM 3 M-E-H-R-L, ELLSWORTH, E-L-L-S-W-O-R-T-H.

10:16AM 4 THE COURT: THANK YOU.

10:16AM 5 MR. SCHENK.

10:16AM 6 MR. SCHENK: THANK YOU, YOUR HONOR.

10:16AM 7 **DIRECT EXAMINATION**

10:16AM 8 BY MR. SCHENK:

10:16AM 9 Q. DR. ELLSWORTH, IF YOU'RE FULLY VACCINATED, I UNDERSTAND,
10:16AM 10 WITH THE COURT'S PERMISSION, YOU CAN TESTIFY WITHOUT A MASK ON.

10:16AM 11 A. THANK YOU. I WILL DO THAT.

10:16AM 12 Q. THANK YOU.

10:16AM 13 DR. ELLSWORTH, I WANT TO DRAW YOUR ATTENTION TO THE MAY OR
10:16AM 14 JUNE 2015 TIMEFRAME.

10:16AM 15 DO YOU HAVE THAT TIMEFRAME IN MIND?

10:16AM 16 A. 2018?

10:16AM 17 Q. 2015.

10:16AM 18 A. '15? YES, I DO.

10:16AM 19 Q. WERE YOU EMPLOYED AT THAT TIME?

10:17AM 20 A. YES. I WAS A PRACTICING DENTIST IN ARIZONA.

10:17AM 21 Q. AND WHERE IN ARIZONA?

10:17AM 22 A. MY OFFICE IS IN LITCHFIELD PARK.

10:17AM 23 Q. AND DID YOU ALSO RESIDE IN ARIZONA AT THAT TIME?

10:17AM 24 A. YES. I LIVED THREE BLOCKS FROM MY OFFICE.

10:17AM 25 Q. AT THAT TIME, AGAIN, THE MAY, JUNE 2015 TIMEFRAME, WERE

10:17AM 1 YOU PLANNING TO TAKE A LENGTHY INTERNATIONAL TRIP?

10:17AM 2 A. YES. I HAD BEEN REQUESTED TO BE THE HUMANITARIAN DIRECTOR
10:17AM 3 IN THAILAND, MIRAMAR AND LAOS BY THE CHURCH OF JESUS CHRIST.
10:17AM 4 ANYWAY, MORMON CHURCH, OKAY.

10:17AM 5 Q. THANK YOU.

10:17AM 6 DID YOU HAVE A PHYSICIAN, A PERSONAL PHYSICIAN IN ARIZONA
10:17AM 7 AT THE TIME?

10:17AM 8 A. YES.

10:17AM 9 Q. AND WHO IS THAT?

10:17AM 10 A. DR. BURNES.

10:17AM 11 Q. BEFORE YOU TOOK THIS TRIP, DID YOU HAVE SOME LAB WORK
10:17AM 12 DONE?

10:17AM 13 A. YES. I HAD AN ANNUAL PHYSICAL DONE, AND WE HAD MOVED, AT
10:18AM 14 THE REQUEST OF MY CHURCH PEOPLE, THAT I WOULD BE CLEARED FOR
10:18AM 15 MEDICAL SERVICE IN ANOTHER COUNTRY.

10:18AM 16 Q. I SEE. SOME LAB WORK BEFORE YOU TOOK THIS TRIP?

10:18AM 17 A. YES.

10:18AM 18 Q. AMONG THE BLOOD TESTS, DID YOU GET ORDERS TO TAKE A PSA
10:18AM 19 TEST?

10:18AM 20 A. YES.

10:18AM 21 MR. SCHENK: YOUR HONOR, MAY I APPROACH AGAIN?

10:18AM 22 THE COURT: YES.

10:18AM 23 MR. SCHENK: (HANDING.)

10:18AM 24 Q. DR. ELLSWORTH, I'VE HANDED YOU A BINDER OF DOCUMENTS THAT
10:18AM 25 I'M GOING TO ASK YOU TO LOOK AT IN PARTICULAR IN A MOMENT.

10:18AM 1 BUT WHEN YOU WERE GETTING THIS LAB WORK DONE, DID YOU
10:18AM 2 SPEAK WITH DR. BURNES ABOUT WHERE YOU SHOULD GO TO HAVE YOUR
10:18AM 3 LAB WORK DONE?

10:18AM 4 A. YES.

10:18AM 5 Q. AND WHAT DID YOU DISCUSS?

10:18AM 6 A. HE RECOMMENDED, SINCE IT WAS -- WE COMPLETED THE MAJOR
10:18AM 7 BATTERY, BUT THE PSA HAD BEEN EXCLUDED, THAT IT WOULD BE A
10:19AM 8 SIMPLE MATTER TO JUST RUN OVER TO WALGREENS AND THERANOS WAS
10:19AM 9 AVAILABLE THERE ON -- ON AN INEXPENSIVE AND QUICK BASIS.

10:19AM 10 Q. DID YOU EVENTUALLY GO TO THERANOS FOR YOUR BLOOD TESTS?

10:19AM 11 A. YES.

10:19AM 12 Q. AND DID YOU EXPECT THAT THE BLOOD TEST RESULTS THAT YOU
10:19AM 13 RECEIVED FROM THERANOS WOULD BE ACCURATE?

10:19AM 14 A. YES.

10:19AM 15 Q. WHY DID YOU EXPECT THAT?

10:19AM 16 A. THEY WERE INTEGRATED INTO THE WALGREENS STRUCTURE, SO
10:19AM 17 BETWEEN BEING A REPUTABLE FIRM AND DR. BURNES'S RECOMMENDATION,
10:19AM 18 ACCURACY WOULD BE EXPECTED.

10:19AM 19 Q. ACCURACY OF THE BLOOD TESTS, AS YOU SAY, WOULD JUST BE
10:19AM 20 EXPECTED?

10:19AM 21 A. YES.

10:19AM 22 Q. I'D LIKE TO NOW HAVE YOU TURN TO PAGE 7 OF TAB 4938.

10:19AM 23 YOUR HONOR, PERMISSION TO PUBLISH?

10:20AM 24 THE COURT: YES.

10:20AM 25 THE WITNESS: PAGE 7?

10:20AM 1 BY MR. SCHENK:

10:20AM 2 Q. YES, SIR. ACTUALLY, AT THE BOTTOM OF THE DOCUMENT THERE'S

10:20AM 3 A TRIAL EXHIBIT NUMBER AND A PAGE NUMBER, SORT OF.

10:20AM 4 DO YOU SEE THAT?

10:20AM 5 A. I'LL JUST COUNT THE PAGES.

10:20AM 6 I'M ON THE LAST PAGE; IS THAT CORRECT?

10:20AM 7 Q. ONE PAGE BEFORE THE LAST PAGE.

10:20AM 8 A. OKAY. THERANOS.

10:20AM 9 OKAY. I SEE IT.

10:20AM 10 Q. AND IT'S ALSO ON THE SCREEN IN FRONT OF YOU IF THAT ENDS

10:20AM 11 UP BEING --

10:20AM 12 A. YEAH, YEAH, THAT'S GOOD.

10:20AM 13 Q. DOCTOR, IS THIS THE FIRST -- DID YOU GET MULTIPLE BLOOD

10:20AM 14 TESTS AT THERANOS?

10:20AM 15 A. YES.

10:20AM 16 Q. AND DO YOU SEE ON THIS DOCUMENT THERE'S A VISIT DATE OF

10:20AM 17 MAY 14TH, 2015?

10:20AM 18 DO YOU SEE THAT?

10:20AM 19 A. YES.

10:20AM 20 Q. WAS THIS THE VERY FIRST --

10:20AM 21 A. CORRECT.

10:20AM 22 Q. -- PSA BLOOD TEST AT THERANOS?

10:21AM 23 A. YES.

10:21AM 24 Q. AND DO YOU SEE THE SCORE HERE WAS A 26?

10:21AM 25 A. YES.

10:21AM 1 Q. BEFORE THIS TEST, HAD YOU RECEIVED PRIOR PSA TEST SCORES
10:21AM 2 JUST IN YOUR -- IN THE HISTORY OF YOUR MEDICAL EXPERIENCE?

10:21AM 3 A. YES. I HAD HAD ANNUAL PHYSICALS DONE BY DR. BURNES FOR AT
10:21AM 4 LEAST FOUR YEARS PREVIOUSLY, AND SO WE HAD A PROFILE OF WHAT WE
10:21AM 5 WOULD EXPECT TO BE A PSA READING.

10:21AM 6 Q. AND HOW DID THIS 26 COMPARE WITH YOUR PREVIOUS SCORES?

10:21AM 7 A. I HAD ALWAYS BEEN AROUND 2 IN THE PAST, SO THIS WAS, I
10:21AM 8 GUESS YOU WOULD CALL, A TEN-FOLD INCREASE.

10:21AM 9 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE TEST
10:21AM 10 EXPERIENCE.

10:21AM 11 DO YOU RECALL WHERE YOU WENT TO GET THE BLOOD DRAW?

10:21AM 12 A. I WENT TO THE WALGREENS RETAIL PHARMACY IN TECHNICALLY
10:22AM 13 GOODYEAR, BUT ABOUT A HALF A MILE FROM DR. BURNES'S OFFICE AND
10:22AM 14 ABOUT A HALF A MILE FROM MY OFFICE.

10:22AM 15 Q. AND THAT'S GENERALLY IN THE PHOENIX, ARIZONA AREA?

10:22AM 16 A. GENERALLY. ON THE WEST SIDE WHEN YOU CONSIDER PHOENIX,
10:22AM 17 YES.

10:22AM 18 Q. WHAT PART OF YOUR BODY WAS THE BLOOD DRAWN FROM? DO YOU
10:22AM 19 REMEMBER?

10:22AM 20 A. IT WAS DONE AS A FINGERSTICK.

10:22AM 21 Q. HOW ABOUT THE PAYMENT? DO YOU REMEMBER IF YOU PAID OUT OF
10:22AM 22 POCKET OR IF INSURANCE PAID?

10:22AM 23 DO YOU HAVE A RECOLLECTION?

10:22AM 24 A. I JUST PRESENTED MY PERSONAL CREDIT CARD AND PAID FOR IT
10:22AM 25 IN ALL CASES THAT WAY.

10:22AM 1 Q. WHAT DO YOU MEAN "IN ALL CASES"?

10:22AM 2 A. FOR THE SUBSEQUENT TESTING, TESTS, TOO.

10:22AM 3 Q. I SEE. SO IN ADDITION TO THIS THERANOS TEST, YOU

10:22AM 4 PERSONALLY PAID FOR OTHER THERANOS TESTS?

10:22AM 5 A. YES.

10:22AM 6 Q. AFTER YOU RECEIVED THIS HIGH SCORE, THE 26, WHAT DID YOU

10:23AM 7 DO NEXT?

10:23AM 8 A. ONCE THE NUMBER CAME IN, THEN THERE WAS A DISCUSSION WITH

10:23AM 9 DR. BURNES. HE QUESTIONED THE RESULTS BEING OUT OF CHARACTER,

10:23AM 10 AND I THINK IT WAS, WHAT, THREE OR FOUR DAYS LATER, WE SAID

10:23AM 11 LET'S DO IT AGAIN AND SEE IF WE CAN GET A CONSISTENT RESULT.

10:23AM 12 Q. AND NOW IF YOU'LL TURN ONE PAGE PRIOR IN THIS EXHIBIT,

10:23AM 13 PAGE 6.

10:23AM 14 DO YOU SEE A LAB RESULT FOLLOWING A VISIT NOW ON MAY 18TH

10:23AM 15 OF 2015?

10:23AM 16 A. CORRECT.

10:23AM 17 Q. WAS THIS THE SECOND THERANOS PSA TEST THAT YOU RECEIVED?

10:23AM 18 A. YES.

10:23AM 19 Q. AND DID YOU GO TO THE SAME WALGREENS?

10:23AM 20 A. YES.

10:23AM 21 Q. AND DID YOU ALSO RECEIVE THIS VIA FINGERSTICK?

10:23AM 22 A. YES.

10:23AM 23 Q. AND I THINK YOU TESTIFIED ALREADY, DID YOU PERSONALLY USE

10:23AM 24 YOUR OWN FUNDS, YOUR PERSONAL FUNDS TO PAY FOR THIS?

10:23AM 25 A. YES.

10:23AM 1 Q. THANK YOU.

10:23AM 2 THE SCORE HERE IS A 1.71.

10:24AM 3 DO YOU SEE THAT?

10:24AM 4 A. YES.

10:24AM 5 Q. WAS THAT SCORE MORE CONSISTENT WITH THE RESULTS THAT YOU

10:24AM 6 HISTORICALLY HAD SEEN?

10:24AM 7 A. YES, BECAUSE I ALWAYS STAYED UNDER 2.

10:24AM 8 Q. DID YOU END UP GETTING A THIRD TEST?

10:24AM 9 A. YES.

10:24AM 10 Q. I'M SORRY. WHY?

10:24AM 11 A. YES.

10:24AM 12 Q. AND WHY? THE FIRST WAS OVER 20, AND THEN YOU HAVE THE

10:24AM 13 1.7. WHY DID YOU GET A THIRD TEST?

10:24AM 14 A. DR. BURNES'S SUGGESTION WAS, WELL, SINCE YOU'RE GOING

10:24AM 15 INTERNATIONAL, LET'S DO TWO OUT OF THREE AND SEE WHAT WE CAN

10:24AM 16 COME UP WITH.

10:24AM 17 Q. IF YOU'LL NOW TURN ONE PAGE PRIOR IN THE EXHIBIT, WE'RE

10:24AM 18 NOW ON TO PAGE 5.

10:24AM 19 IS THIS A TEST RESULT FOR YOUR PSA TEST ON

10:24AM 20 JUNE 11TH, 2015?

10:24AM 21 A. YES.

10:24AM 22 Q. NOW, IS THIS THE THIRD TEST THAT YOU --

10:24AM 23 A. YES.

10:24AM 24 Q. THANK YOU.

10:24AM 25 THIS TIME IT LOOKS LIKE THE SCORE WAS A 22.8.

10:24AM 1 DO YOU SEE THAT?

10:24AM 2 A. YES.

10:24AM 3 Q. AND SO THIS IS HIGH LIKE THE FIRST ONE; IS THAT RIGHT?

10:24AM 4 A. CORRECT.

10:24AM 5 Q. AND WAS THIS ALSO AT THE SAME WALGREENS?

10:25AM 6 A. YES.

10:25AM 7 Q. VIA FINGERSTICK?

10:25AM 8 A. YES.

10:25AM 9 Q. AND YOU PERSONALLY PAID WITH YOUR OWN FUNDS?

10:25AM 10 A. YES.

10:25AM 11 Q. SO NOW THAT YOU HAVE ONE HIGH SCORE, ONE LOWER OR EXPECTED
10:25AM 12 SCORE, AND NOW A THIRD HIGHER SCORE, WHAT DID YOU DO NEXT?

10:25AM 13 A. THERE WAS, YOU MIGHT SAY, A LONGER DISCUSSION WITH
10:25AM 14 DR. BURNES. HE SAID THAT WE CAN'T REALLY ACCEPT THIS RESULT
10:25AM 15 BASED ON YOUR PREVIOUS HISTORY, AND I THINK IT'S FAULTY. I'M
10:25AM 16 GOING TO TALK TO THE THERANOS REGIONAL PEOPLE.

10:25AM 17 I DON'T KNOW THE EXACT ONES THAT HE SPOKE WITH, BUT I KNOW
10:25AM 18 THAT THERE WAS A DISCUSSION WITH THERANOS THAT -- WE WERE
10:25AM 19 TRYING TO BE HELPFUL TO THEM.

10:25AM 20 THERE WASN'T ANY GREAT CONCERN ON MY PART. I HAD NO
10:25AM 21 SYMPTOMS.

10:25AM 22 AND DR. BURNES FACILITATED THEN AN ADDITIONAL TEST BEING
10:26AM 23 DONE.

10:26AM 24 Q. AND WAS THIS FOURTH ONE DIFFERENT IN LOCATION AND THE FORM
10:26AM 25 OF THE BLOOD DRAW THAN THE PRIOR THREE?

10:26AM 1 A. YES. SO THERANOS HAD HIRED A PHLEBOTOMIST TO COME
10:26AM 2 DIRECTLY TO MY OFFICE, SO I LAID DOWN IN MY DENTAL CHAIR, PUT
10:26AM 3 MY ARM OUT, AND HAD A VENOUS BLOOD DRAW.
10:26AM 4 Q. IF YOU'LL NOW TURN TO ONE PAGE PRIOR, THAT'S PAGE 4 OF THE
10:26AM 5 EXHIBIT, IT LOOKS LIKE THE DATE IS JUNE 30TH, 2015.
10:26AM 6 DO YOU SEE THAT?
10:26AM 7 A. YES.
10:26AM 8 Q. AND THIS TIME THE SCORE IS A 0.95; IS THAT RIGHT?
10:26AM 9 A. YES.
10:26AM 10 Q. YOU SAID THIS ONE, THE FORM OF A BLOOD DRAW WAS DIFFERENT.
10:26AM 11 THIS ONE WAS TAKEN FROM YOUR VEIN?
10:26AM 12 A. YES.
10:26AM 13 Q. THE FIRST THREE WERE ALL FINGERSTICK; IS THAT RIGHT?
10:26AM 14 A. YES.
10:26AM 15 Q. DID YOU PAY FOR THIS FOURTH ONE?
10:26AM 16 A. NO. THAT WAS -- THERE WAS NO PAYMENT REQUESTED, OR I
10:26AM 17 GUESS REALLY OFFERED. IT WAS JUST THE PERSON CAME TO MY
10:26AM 18 OFFICE. THERE WAS SOME KIND OF APPOINTMENT MADE WITH MY STAFF,
10:27AM 19 AND SHE WAS IN AND OUT IN PROBABLY 15 MINUTES, OR 10.
10:27AM 20 Q. AND AFTER YOU RECEIVED THIS FOURTH THERANOS BLOOD TEST,
10:27AM 21 DID YOU THEN, IN FACT, TAKE THE TRIP THAT WE HAVE BEEN
10:27AM 22 DISCUSSING?
10:27AM 23 A. YES.
10:27AM 24 Q. THANK YOU.
10:27AM 25 YOUR HONOR, MAY I HAVE ONE MOMENT?

10:27AM 1 THE COURT: YES.

10:27AM 2 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

10:27AM 3 MR. SCHENK: THANK YOU VERY MUCH, DOCTOR.

10:27AM 4 NO FURTHER QUESTIONS.

10:27AM 5 THE WITNESS: THANK YOU.

10:27AM 6 THE COURT: CROSS-EXAMINATION?

10:27AM 7 MR. COOPERSMITH: WE HAVE NO QUESTIONS FOR

10:27AM 8 DR. ELLSWORTH.

10:27AM 9 THE COURT: THANK YOU.

10:27AM 10 MAY THIS WITNESS BE EXCUSED?

10:27AM 11 MR. COOPERSMITH: YES, YOUR HONOR.

10:27AM 12 MR. SCHENK: NO, YOUR HONOR.

10:27AM 13 THE COURT: YOU'RE EXCUSED. THANK YOU, SIR.

10:28AM 14 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

10:28AM 15 MR. BOSTIC: YES, YOUR HONOR.

10:28AM 16 THE UNITED STATES CALLED BRENT BINGHAM.

10:28AM 17 THE COURT: GOOD MORNING, SIR. IF YOU COULD JUST

10:28AM 18 COME FORWARD HERE AND RAISE YOUR RIGHT HAND AND FACE OUR

10:28AM 19 COURTROOM DEPUTY, SHE HAS A QUESTION FOR YOU.

10:28AM 20 **(GOVERNMENT'S WITNESS, BRENT BINGHAM, WAS SWORN.)**

10:28AM 21 THE WITNESS: I DO.

10:28AM 22 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR. I'LL

10:29AM 23 INVITE YOU TO MAKE YOURSELF COMFORTABLE.

10:29AM 24 THE WITNESS: THANK YOU.

10:29AM 25 THE COURT: YOU'RE WELCOME.

10:29AM 1 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU
10:29AM 2 NEED.

10:29AM 3 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
10:29AM 4 AND THEN SPELL IT, PLEASE.

10:29AM 5 THE WITNESS: MY NAME IS BRENT BINGHAM. B-R-E-N-T,
10:29AM 6 B-I-N-G-H-A-M.

10:29AM 7 THE COURT: THANK YOU.
10:29AM 8 COUNSEL.

10:29AM 9 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:29AM 10 **DIRECT EXAMINATION**

10:29AM 11 BY MR. BOSTIC:

10:29AM 12 Q. GOOD MORNING, MR. BINGHAM.

10:29AM 13 A. GOOD MORNING.

10:29AM 14 Q. IF YOU ARE FULLY VACCINATED AND ARE COMFORTABLE DOING SO,
10:29AM 15 I UNDERSTAND THE COURT WILL ALLOW YOU TO TESTIFY WITHOUT A
10:29AM 16 MASK.

10:29AM 17 A. OKAY. I AM.

10:29AM 18 Q. MR. BINGHAM, WAS THERE A TIME WHEN YOU HAD SOME BLOOD
10:29AM 19 TESTING DONE BY A LAB CALLED THERANOS?

10:29AM 20 A. YES.

10:29AM 21 Q. AND DO YOU REMEMBER APPROXIMATELY WHAT YEAR THAT TOOK
10:29AM 22 PLACE?

10:29AM 23 A. 2015.

10:29AM 24 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THAT TESTING, BUT
10:29AM 25 LET ME GET SOME BACKGROUND ABOUT YOU FIRST IF I COULD.

10:30AM 1 WHERE DO YOU CURRENTLY LIVE?

10:30AM 2 A. PHOENIX, ARIZONA.

10:30AM 3 Q. AND IS THAT WHERE YOU WERE LIVING IN THE 2015 TIME AS
10:30AM 4 WELL?

10:30AM 5 A. YES.

10:30AM 6 Q. IN 2015, WERE YOU EMPLOYED?

10:30AM 7 A. YES.

10:30AM 8 Q. AND WHAT WAS YOUR PROFESSION AT THAT TIME?

10:30AM 9 A. AT THAT TIME I WAS SELF-EMPLOYED DOING BODY WORK THERAPY.

10:30AM 10 Q. AND DID YOU HAVE A CAREER WHERE YOU WERE IN A DIFFERENT
10:30AM 11 PROFESSION BEFORE THAT?

10:30AM 12 A. YEAH. I HAD SEVERAL GEOLOGISTS BEFORE THAT, FIELD
10:30AM 13 GEOLOGISTS IN MINING.

10:30AM 14 ALSO A MINER ENGINEER UNDERGROUND.

10:30AM 15 Q. AND FOR APPROXIMATELY HOW MANY YEARS DID YOU WORK IN
10:30AM 16 GEOLOGY AND MINE ENGINEERING?

10:30AM 17 A. BASICALLY 20, 20 YEARS.

10:30AM 18 Q. LEADING UP TO THE 2015 TIME PERIOD, HAD YOU HAD
10:31AM 19 SIGNIFICANT EXPERIENCE WITH BLOOD TESTING?

10:31AM 20 A. YES.

10:31AM 21 Q. HOW DID YOU COME TO HAVE EXPERIENCE WITH BLOOD TESTING?

10:31AM 22 A. I HAVE A GENETIC MUTATION THAT CAUSES ME TO MAKE TOO MANY
10:31AM 23 PLATELETS, SO I NEED TO KEEP TRACK OF MY PLATELET COUNT.

10:31AM 24 Q. AND YOU SAID YOU NEED TO KEEP TRACK OF YOUR PLATELET
10:31AM 25 COUNT.

10:31AM 1 DO YOU DO THAT THROUGH BLOOD TESTING?

10:31AM 2 A. YES.

10:31AM 3 Q. AND GENERALLY SPEAKING, ABOUT HOW FREQUENTLY DO YOU GET A
10:31AM 4 BLOOD TEST TO MONITOR YOUR PLATELET COUNT?

10:31AM 5 A. ON AVERAGE, FOUR TIMES A YEAR.

10:31AM 6 Q. AND THE CONDITION THAT YOU WERE DIAGNOSED WITH, CAN YOU
10:31AM 7 TELL US A LITTLE BIT ABOUT THAT, WHAT THE SYMPTOMS ARE AND WHY
10:31AM 8 IT'S NECESSARY THAT YOU MONITOR YOUR PLATELET COUNT?

10:31AM 9 A. YEAH. THE MUTATION SIGNALS TO MAKE MORE PLATELETS THAN I
10:31AM 10 NEED, AND IT'S CONTROLLED BY A DRUG CALLED HYDROXYUREA, AND
10:32AM 11 ALSO ASPRIN, BABY ASPRIN EVERY DAY.

10:32AM 12 IT'S IMPORTANT FOR ME TO KNOW WHAT MY PLATELETS ARE
10:32AM 13 BECAUSE THERE'S AN ENVIRONMENTAL CAUSES, LIKE IF I GET A -- I
10:32AM 14 CAN CONTROL MY PLATELETS IN A SECONDARY WAY, LIKE THROUGH DIET;
10:32AM 15 AND DURING HAYFEVER SEASON, IT WILL MAKE MY PLATELETS GO UP; OR
10:32AM 16 IF I GET STUNG BY INSECTS, THAT WILL MAKE ME SPIKE MY PLATELETS
10:32AM 17 AS WELL.

10:32AM 18 Q. AND DOES THE CONDITION THAT YOU HAVE MANIFEST IN ANY
10:32AM 19 SYMPTOMS IN YOU? DOES IT CAUSE ANY EFFECTS IN THE WAY YOU
10:32AM 20 FEEL?

10:32AM 21 A. YES, IT DOES.

10:32AM 22 Q. CAN YOU DESCRIBE THOSE?

10:32AM 23 A. THOSE EFFECTS ARE LETHARGY AS THEY GET HIGH; ALSO I'LL GET
10:33AM 24 TINGLING IN MY HANDS AND EXTREMITIES; I HAVE BEEN ABLE TO, BY
10:33AM 25 THE WAY IT MAKES ME FEEL, BASICALLY GAUGE WHAT MY PLATELETS

10:33AM 1 ARE.

10:33AM 2 Q. AND WHEN WERE YOU FIRST DIAGNOSED WITH THE CONDITION THAT
10:33AM 3 WE ARE TALKING ABOUT?

10:33AM 4 A. 2010.

10:33AM 5 Q. AND HAVE YOU BEEN GETTING REGULAR PLATELET TESTING SINCE
10:33AM 6 THEN?

10:33AM 7 A. YES.

10:33AM 8 Q. AND DO YOU STILL GET REGULAR PLATELET TESTING EVEN TODAY?

10:33AM 9 A. YES, I DO.

10:33AM 10 Q. ARE YOU AWARE OF WHETHER OR NOT THE PLATELET TEST IS PART
10:33AM 11 OF A BLOOD TEST PANEL CALLED THE COMPLETE BLOOD COUNT?

10:33AM 12 A. YES, I AM.

10:33AM 13 Q. AND IS IT?

10:33AM 14 A. IT IS.

10:33AM 15 Q. AND YOU MENTIONED THAT, FROM PAYING ATTENTION TO YOUR
10:34AM 16 SYMPTOMS, YOU WERE ABLE TO GET A SENSE OF HOW DIFFERENT
10:34AM 17 PLATELET LEVELS WOULD AFFECT YOU; IS THAT RIGHT?

10:34AM 18 A. THAT'S CORRECT.

10:34AM 19 Q. CAN YOU EXPLAIN THAT? WHAT LEVELS WERE YOU USED TO SEEING
10:34AM 20 IN YOUR PLATELET TEST, AND HOW DID THAT CORRESPOND TO HOW YOU
10:34AM 21 WOULD FEEL?

10:34AM 22 A. THE NORMAL RANGE IS 125 TO 400, AND I FEEL PRETTY NORMAL
10:34AM 23 CLEAR UP TO AROUND THE MID 700'S.

10:34AM 24 AND SO I KEEP IT AT -- TRY TO KEEP IT IN THAT RANGE, LIKE,
10:34AM 25 50 PERCENT ABOVE THE HIGH END OF NORMAL RANGE.

10:34AM 1 Q. SO THE SYMPTOMS THAT YOU MENTIONED, THE LETHARGY AND OTHER
10:34AM 2 SYMPTOMS, YOU START NOTICING THOSE AT AROUND LEVEL 800; IS THAT
10:35AM 3 CORRECT?

10:35AM 4 A. YEAH, IF I START APPROACHING 800. AND BY 900, IT'S,
10:35AM 5 IT'S -- I'M NOT DOING MUCH.

10:35AM 6 Q. AND OVER THE YEARS YOU'VE GOTTEN THESE PLATELET TEST
10:35AM 7 RESULTS, WHAT LEVELS DO YOU TYPICALLY SEE IN YOUR SYSTEM GIVEN
10:35AM 8 YOUR CONDITION AND THE MEDICATION THAT YOU'RE ON?

10:35AM 9 A. I'M PRETTY MUCH BETWEEN 700 AND 750.

10:35AM 10 Q. AND LEADING UP TO SUMMER OF 2015, WHERE WERE YOU GETTING
10:35AM 11 YOUR PLATELET TESTING DONE?

10:35AM 12 A. COULD YOU REPEAT?

10:35AM 13 Q. SURE. LEADING UP TO SUMMER OF 2015, WHAT LAB WERE YOU
10:35AM 14 USING FOR PLATELET TESTING?

10:35AM 15 A. OH. I USED A LAB BASED OUT OF CALIFORNIA -- I MEAN,
10:35AM 16 FLORIDA. I COULD GET ONLINE AND ORDER UP A LAB AND PAY FOR IT,
10:35AM 17 AND THEN I WOULD GET A WRITTEN ORDER SIGNED BY A DOCTOR IN
10:36AM 18 FLORIDA AND THEN I WOULD GO TO LABCORP TO GET THE LAB DONE.

10:36AM 19 Q. SO THE ACTUAL PLACE WHERE THE BLOOD WAS DRAWN AND THE
10:36AM 20 ANALYSIS WAS DONE YOU SAID WAS LABCORP?

10:36AM 21 A. YES.

10:36AM 22 Q. AND WAS THAT IN THE PHOENIX AREA AS WELL?

10:36AM 23 A. YES.

10:36AM 24 Q. YOU MENTIONED PAYING FOR IT.

10:36AM 25 IS IT YOUR PRACTICE TO PAY DIRECTLY FOR THE PLATELET

10:36AM 1 TESTING THAT YOU GET DONE?

10:36AM 2 A. YEAH, I PAY OUT OF POCKET.

10:36AM 3 Q. LET'S TALK ABOUT THERANOS THEN.

10:36AM 4 HOW DID YOU FIRST LEARN ABOUT THAT COMPANY?

10:36AM 5 A. THROUGH THE PRESS, MEDIA, DIFFERENT SOURCES.

10:36AM 6 Q. AND WAS THIS IN THE TIME PERIOD LEADING UP TO WHEN YOU
10:36AM 7 EVENTUALLY WENT TO THEM FOR TESTING?

10:36AM 8 A. YES, IT WAS.

10:36AM 9 Q. SO YOU MENTIONED PRESS AND OTHER SOURCES. I JUST WANT TO
10:36AM 10 MAKE SURE THAT WE'RE COVERING EVERYTHING.

10:36AM 11 SO BESIDES PRESS ARTICLES, WHAT ELSE DO YOU REMEMBER
10:36AM 12 SEEING, OR WHERE ELSE DO YOU REMEMBER LOOKING FOR INFORMATION
10:36AM 13 ABOUT THERANOS?

10:36AM 14 A. MAINLY FROM READING STUFF ONLINE. LIKE, I WOULD READ
10:37AM 15 "WIRED" MAGAZINE A LOT ON TECHNOLOGICAL INNOVATIONS.

10:37AM 16 MY MEMORY OF EXACTLY WHERE I SAW IT ISN'T THAT CLEAR, BUT
10:37AM 17 I JUST KNOW THE WAY I WOULD LOOK FOR INFORMATION.

10:37AM 18 Q. AND THAT'S MY NEXT QUESTION.

10:37AM 19 YOU MENTIONED LOOKING FOR INFORMATION, SO LET ME ASK, THE
10:37AM 20 INFORMATION THAT YOU SAW ABOUT THERANOS, WAS IT THINGS THAT YOU
10:37AM 21 HAPPENED TO COME UPON IN JUST BROWSING FOR OTHER NEWS, OR DID
10:37AM 22 YOU SPECIFICALLY INVESTIGATE THE COMPANY BEFORE YOU WENT THERE?

10:37AM 23 A. WELL, THAT WAS INITIALLY THAT WAY, BUT THEN I STARTED
10:37AM 24 LOOKING FOR IT.

10:37AM 25 Q. AS PART OF THAT INVESTIGATION, DID YOU ALSO VISIT THE

10:37AM 1 THERANOS WEBSITE?

10:37AM 2 A. YES.

10:37AM 3 Q. YOU MENTIONED THAT YOU READ "WIRED" FREQUENTLY AROUND THAT

10:37AM 4 TIME PERIOD; IS THAT CORRECT?

10:38AM 5 A. CORRECT.

10:38AM 6 Q. I'D LIKE TO SHOW YOU AN ARTICLE THAT IS ALREADY IN

10:38AM 7 EVIDENCE AS EXHIBIT 5801.

10:38AM 8 MAY WE PUBLISH, YOUR HONOR?

10:38AM 9 THE COURT: YES.

10:38AM 10 BY MR. BOSTIC:

10:38AM 11 Q. LET'S GO TO THE SECOND PAGE OF THIS EXHIBIT.

10:38AM 12 MR. BINGHAM, DO YOU SEE HERE THERE'S A TITLE, "ONE DROP,

10:38AM 13 INFINITE DATA, HOW ELIZABETH HOLMES BUILT A BETTER BLOOD TEST?"

10:38AM 14 DO YOU SEE THAT?

10:38AM 15 A. YES.

10:38AM 16 Q. AND IF WE CAN, LET'S ZOOM IN ON THE CONTENT OF THAT FIRST

10:38AM 17 PAGE. APOLOGIES, THIS WILL BE A LITTLE DIFFICULT TO READ.

10:38AM 18 BUT I'LL DRAW YOUR ATTENTION TO THE BOTTOM OF THAT

10:38AM 19 PARAGRAPH, AND DO YOU SEE THAT IT SAYS, "INSTEAD OF VIALS OF

10:38AM 20 BLOOD, ONE FOR EVERY TEST NEEDED, THERANOS REQUIRES ONLY A

10:38AM 21 PINPRICK AND A DROP OF BLOOD"?

10:38AM 22 DO YOU SEE THAT?

10:38AM 23 A. YES, YES.

10:38AM 24 Q. AND IT SAYS, "WITH THAT, THEY CAN PERFORM HUNDREDS OF

10:38AM 25 TESTS, FROM STANDARD CHOLESTEROL CHECKS TO," LET'S GO TO THE

10:38AM 1 NEXT PAGE, ZOOM IN ON THE UPPER LEFT, "TO SOPHISTICATED GENETIC
10:39AM 2 ANALYSES."

10:39AM 3 DO YOU SEE THAT?

10:39AM 4 A. YES.

10:39AM 5 Q. AND IT GOES ON TO SAY, "THE RESULTS ARE FASTER, MORE
10:39AM 6 ACCURATE, AND FAR CHEAPER THAN CONVENTIONAL METHODS."

10:39AM 7 DO YOU SEE THAT?

10:39AM 8 A. YES, I DO.

10:39AM 9 Q. LET ME ASK, AROUND THE TIME THAT YOU WERE LOOKING INTO
10:39AM 10 THERANOS AND DECIDING WHERE TO GET YOUR BLOOD WORK DONE, DID
10:39AM 11 CLAIMS ABOUT ACCURACY MATTER TO YOU?

10:39AM 12 A. YES.

10:39AM 13 Q. CAN YOU EXPLAIN WHY THAT IS THE CASE?

10:39AM 14 A. IT'S THE CASE BECAUSE I HAVE A -- THE DISEASE THAT I HAVE
10:39AM 15 CAUSES MY PLATELETS TO -- NEED TO BE CONTROLLED BY A
10:39AM 16 MEDICATION, AND I LIKE TO MINIMIZE THE MEDICATION BECAUSE IN
10:39AM 17 THE LONG RUN IT CAN WORK TOO WELL, AND BECAUSE I HAVE A DISEASE
10:40AM 18 OF EXCESS, I MAKE TOO MANY PLATELETS.

10:40AM 19 BUT THE CELLS THE DRUG I TAKE GOES AFTER CAN ALSO AFFECT
10:40AM 20 POTENTIALLY RED BLOOD CELLS AND WHITE BLOOD CELLS, SO I WANT TO
10:40AM 21 MINIMIZE THAT LEVEL.

10:40AM 22 SO IT'S IMPORTANT FOR ME TO KNOW IF I CAN CONTROL IT WITH
10:40AM 23 DIET, EXERCISE, AND THINGS THAT I CAN DO.

10:40AM 24 Q. AND THAT IS ALL IN FURTHERANCE OF THE GOAL OF NOT TAKING
10:40AM 25 MORE OF THAT MEDICATION THAN YOU NEED TO?

10:40AM

1

A. YES.

10:40AM

2

MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

10:40AM

3

THE COURT: YES.

10:40AM

4

MR. BOSTIC: (HANDING.)

10:40AM

5

Q. MR. BINGHAM, I'D LIKE TO GO OVER A FEW DOCUMENTS WITH YOU.

10:40AM

6

I'VE JUST HANDED YOU A BINDER.

10:40AM

7

IF I COULD START BY ASKING YOU TO TURN TO TAB 5839.

10:41AM

8

A. OKAY.

10:41AM

9

Q. AND AT 5839, DO YOU SEE AN EMAIL FROM THERANOS CUSTOMER

10:41AM

10

SERVICE TO YOU IN AUGUST OF 2015?

10:41AM

11

A. YES, I DO.

10:41AM

12

MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5839.

10:41AM

13

MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:41AM

14

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:41AM

15

(GOVERNMENT'S EXHIBIT 5839 WAS RECEIVED IN EVIDENCE.)

10:41AM

16

BY MR. BOSTIC:

10:41AM

17

Q. DO YOU SEE, MR. BINGHAM, THAT THIS IS AN EMAIL SENT TO YOU

10:41AM

18

FROM CUSTOMERSERVICE@THERANOS.COM?

10:41AM

19

A. YES, I DO.

10:41AM

20

Q. AND IT SAYS, "THERANOS, YOUR VISIT CODE," AND THEN THE

10:41AM

21

TEXT SAYS "WELCOME TO THERANOS."

10:41AM

22

DO YOU SEE THAT?

10:41AM

23

A. YES, I DO.

10:41AM

24

Q. AROUND THIS TIME PERIOD, DID YOU START GOING TO THERANOS

10:41AM

25

FOR BLOOD TESTING?

10:41AM 1

A. YES.

10:41AM 2

Q. WHY DID YOU DECIDE TO SWITCH FROM LABCORP AND TRY OUT

10:41AM 3

THERANOS IN AUGUST OF 2015?

10:41AM 4

A. UM, THE MAIN REASON WAS THAT THERANOS HAD MADE IT POSSIBLE

10:42AM 5

TO ORDER MY OWN LAB TESTS IN ARIZONA, AND THEN THE PRICE, IT

10:42AM 6

WAS LIKE AROUND \$5.

10:42AM 7

Q. AND WAS THAT LESS EXPENSIVE THAN THE CONVENTIONAL LAB YOU

10:42AM 8

HAD BEEN GOING TO BEFORE?

10:42AM 9

A. YEAH, AN ORDER OF MAGNITUDE LESS.

10:42AM 10

Q. AROUND THIS TIME PERIOD, SO AUGUST 12TH OF 2015, DID YOU

10:42AM 11

GO TO THERANOS FOR A PLATELET TEST FOR THE FIRST TIME?

10:42AM 12

A. YES.

10:42AM 13

Q. DO YOU STILL HAVE THE RESULTS THAT YOU OBTAINED FROM THIS

10:42AM 14

FIRST BLOOD TEST AT THERANOS?

10:42AM 15

A. NO, I DO NOT.

10:42AM 16

Q. AND DO YOU REMEMBER ANYTHING ABOUT WHAT THOSE RESULTS WERE

10:42AM 17

AND WHAT YOUR REACTION TO THEM WERE?

10:42AM 18

A. I REMEMBER THAT THEY WERE HIGH COMPARED TO HOW I FELT.

10:42AM 19

Q. CAN YOU TELL US MORE ABOUT THAT?

10:43AM 20

YOU TESTIFIED EARLIER THAT YOUR RESULTS WERE TYPICALLY

10:43AM 21

ABOVE THE REFERENCE RANGE; IS THAT RIGHT?

10:43AM 22

A. CORRECT.

10:43AM 23

Q. AND SO WHAT WAS IT ABOUT THE THERANOS RESULTS THAT GAVE

10:43AM 24

YOU PAUSE?

10:43AM 25

A. THAT THE WAY THAT I FELT DIDN'T CORRELATE WITH THE NUMBERS

10:43AM 1 THAT PRESENTED.

10:43AM 2 Q. FOR THAT FIRST VISIT, DO YOU RECALL HOW YOUR BLOOD WAS

10:43AM 3 DRAWN? HOW THE SAMPLE WAS TAKEN?

10:43AM 4 A. A FINGER, THE METHOD THAT THEY WERE ADVERTISING.

10:43AM 5 Q. A BLOOD DRAW FROM A FINGER PRICK?

10:43AM 6 A. YES.

10:43AM 7 Q. FOLLOWING THAT TEST RESULT THAT YOU SAID DIDN'T QUITE

10:43AM 8 MATCH HOW YOU WERE FEELING, WHAT DID YOU DECIDE ABOUT WHETHER

10:43AM 9 TO KEEP USING THERANOS OR NOT?

10:43AM 10 A. I DECIDED TO KEEP TRYING FOR A BIT TO SEE.

10:43AM 11 Q. AND YOU SAID "TO SEE."

10:43AM 12 WHAT WERE YOU TRYING TO SEE IN CONTINUING TO USE THERANOS?

10:44AM 13 A. SEE IF IT WOULD CORRELATE TO THE WAY THAT I WAS FEELING.

10:44AM 14 Q. IF I COULD ASK YOU TO TURN THE PAGE TO TAB 5840.

10:44AM 15 AND AT 5840, DO YOU SEE ANOTHER MESSAGE FROM THERANOS

10:44AM 16 RELATING TO A SECOND VISIT TO THAT LAB?

10:44AM 17 A. YES, I DO.

10:44AM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5840.

10:44AM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:44AM 20 THE COURT: IT'S ADMITTED AND IT MAY BE PUBLISHED.

10:44AM 21 (GOVERNMENT'S EXHIBIT 5840 WAS RECEIVED IN EVIDENCE.)

10:44AM 22 BY MR. BOSTIC:

10:44AM 23 Q. MR. BINGHAM, DO YOU SEE HERE THAT THIS IS A VISIT TO

10:44AM 24 THERANOS ON AUGUST 21ST, 2015?

10:44AM 25 A. YES, I DO.

10:44AM 1 Q. AND THIS IS ABOUT TEN DAYS AFTER THE PREVIOUS VISIT THAT
10:44AM 2 WE LOOKED AT THE RECORD FOR; IS THAT RIGHT?

10:44AM 3 A. YES.

10:44AM 4 Q. AND WHY DID YOU GO SO SOON THIS TIME AFTER THE LAST TIME?
10:45AM 5 I THINK YOU TESTIFIED EARLIER THAT TYPICALLY THERE WOULD BE A
10:45AM 6 COUPLE OF MONTHS IN BETWEEN YOUR TESTS.

10:45AM 7 A. BECAUSE I WAS, I WAS ON A TRACK TO SEE IF I WANTED TO USE
10:45AM 8 THEM.

10:45AM 9 Q. SO IS THIS STILL PART OF EVALUATING THE LAB TO SEE IF THEY
10:45AM 10 COULD RETURN RESULTS THAT YOU THOUGHT WERE RELIABLE?

10:45AM 11 A. YES, AND ALSO THE PRICE.

10:45AM 12 Q. OKAY. FOR THIS SECOND VISIT, DO YOU STILL HAVE THE
10:45AM 13 RECORDS THAT SHOW WHAT THE ACTUAL NUMBERS WERE WHEN YOU GOT
10:45AM 14 THAT?

10:45AM 15 A. NO, I DO NOT. THEY WERE ON THE WEBSITE THAT THERANOS HAD.

10:45AM 16 Q. OKAY. TELL US ABOUT THAT. HOW WERE YOU ABLE TO ACCESS
10:45AM 17 THE RESULTS AT THIS TIME?

10:45AM 18 A. ON HERE IT SAYS -- LET'S SEE. THEY WOULD GIVE ME A CODE,
10:46AM 19 BUT ON THIS 5840 I DON'T SEE THAT CODE. I SAW IT ON 5839.

10:46AM 20 Q. BUT SPEAKING GENERALLY, DID YOU GET HARD COPY RESULTS IN
10:46AM 21 THE MAIL? WERE YOU EMAILED THE RESULTS THEMSELVES?

10:46AM 22 A. NO, NO, I WAS NOT.

10:46AM 23 Q. BUT HOW DID YOU GET THE ACTUAL RESULTS?

10:46AM 24 A. I WOULD LOOK ON THE WEBSITE AND HAVE AN ACCESSIBLE FILE
10:46AM 25 THERE.

10:46AM 1 Q. FOLLOWING THIS RESULT, DID YOU HAVE A REACTION TO THE
10:46AM 2 VALUE THAT YOU WERE GETTING BACK AND DID YOU MAKE ANY DECISIONS
10:46AM 3 ABOUT WHAT TO DO NEXT?

10:46AM 4 A. YEAH. AND I TALKED TO MY DOCTOR ABOUT IT AND DECIDED TO
10:46AM 5 DO THE COMPARATIVE LAB.

10:46AM 6 Q. AND WHEN YOU SAY "COMPARATIVE LAB," WHAT ARE YOU REFERRING
10:46AM 7 TO?

10:46AM 8 A. WELL, I WAS GOING TO GO TO ANOTHER -- HE HAD A LAB THAT HE
10:46AM 9 USED, SO I WAS GOING TO GET A THERANOS DRAW, AND THEN I DROVE
10:46AM 10 OVER TO THE OTHER LAB AND GOT A DRAW FROM THEM, TOO.

10:47AM 11 Q. AND WHY DID YOU DECIDE TO TAKE THAT ADDITIONAL STEP?

10:47AM 12 A. BECAUSE I WANTED TO CHECK THE NUMBERS BETWEEN EACH OTHER.

10:47AM 13 Q. AT THIS POINT, WERE THE NUMBERS THAT YOU WERE GETTING FROM
10:47AM 14 THERANOS STILL NOT LINING UP WITH WHAT YOU WERE FEELING?

10:47AM 15 A. YEAH, THEY WERE NOT.

10:47AM 16 Q. LET ME ASK YOU TO LOOK AT TAB 2730 IN YOUR BINDER.

10:47AM 17 A. I'M THERE.

10:47AM 18 Q. AND AT 2730, DO YOU SEE A LAB REPORT FROM THERANOS
10:47AM 19 DETAILING SOME OF YOUR RESULTS FROM A VISIT AT THE END OF
10:47AM 20 AUGUST 2015?

10:47AM 21 A. YES, I DO.

10:47AM 22 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2730.

10:47AM 23 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:47AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:47AM 25 (GOVERNMENT'S EXHIBIT 2730 WAS RECEIVED IN EVIDENCE.)

10:47AM 1 BY MR. BOSTIC:

10:47AM 2 Q. SO, MR. BINGHAM, CAN YOU TELL US WHAT WE'RE LOOKING AT

10:47AM 3 HERE?

10:47AM 4 A. THIS IS A LAB THAT I COPIED SO I COULD SHOW IT TO MY

10:48AM 5 DOCTOR FROM THERANOS.

10:48AM 6 Q. SO IS THAT WHY -- WELL, LET ME -- LET ME ASK, WAS THIS THE

10:48AM 7 LAB THAT YOU TOOK FROM THERANOS FOR THE PURPOSE OF COMPARING IT

10:48AM 8 WITH A CONVENTIONAL LAB RESULT?

10:48AM 9 A. YES, IT IS.

10:48AM 10 Q. AND DO YOU SEE AT THE TOP OF THIS SCREEN IT INDICATES THAT

10:48AM 11 THE VISIT DATE FOR THIS LAB WAS ON AUGUST 27TH, 2015?

10:48AM 12 A. YES.

10:48AM 13 Q. AND THE LOCATION OF THE DRAW SHOWS UP AS THERANOS SERVICE

10:48AM 14 CENTER ON 16TH STREET IN PHOENIX.

10:48AM 15 DO YOU SEE THAT?

10:48AM 16 A. YES.

10:48AM 17 Q. AND IS THAT WHERE YOU WENT TO GET YOUR BLOOD DRAWN?

10:48AM 18 A. YES, IT IS.

10:48AM 19 Q. MOVING DOWN THAT PAGE A LITTLE BIT.

10:48AM 20 DO YOU SEE THAT THERE'S A SECTION HIGHLIGHTED, SUMMARY OF

10:48AM 21 ABNORMAL RESULTS?

10:48AM 22 A. YES, I DO.

10:48AM 23 Q. AND ONE OF THE ENTRIES THERE READS PLT.

10:48AM 24 DO YOU SEE THAT?

10:48AM 25 A. YES.

10:48AM 1 Q. AND IS THAT THE ABBREVIATION FOR THE PLATELET RESULT?

10:48AM 2 A. IT IS.

10:48AM 3 Q. AND THE RESULT LISTED HERE IS 909.6.

10:49AM 4 DO YOU SEE THAT?

10:49AM 5 A. THAT'S CORRECT.

10:49AM 6 Q. AND IT'S FLAGGED AS HIGH; IS THAT RIGHT?

10:49AM 7 A. YES.

10:49AM 8 Q. WHAT WAS YOUR REACTION TO GETTING THIS RESULT OF 900-PLUS

10:49AM 9 ON THIS DAY IN AUGUST OF 2015?

10:49AM 10 A. THAT IT WASN'T RIGHT.

10:49AM 11 Q. AND WHAT MADE YOU THINK THAT?

10:49AM 12 A. THE WAY I FELT, AND THEN -- BASICALLY THE WAY I FELT. I

10:49AM 13 DIDN'T FEEL LIKE IT WAS IN THE 900'S.

10:49AM 14 Q. AND CAN YOU JUST EXPLAIN IN DETAIL WHAT YOU MEAN BY THE

10:49AM 15 WAY YOU FELT?

10:49AM 16 A. IF I WAS AT 900, I WOULD BE, LIKE, WANTING TO BE HOME IN

10:49AM 17 BED BASICALLY.

10:49AM 18 Q. IT WOULD MANIFEST IN THAT LETHARGY THAT YOU WERE TALKING

10:49AM 19 ABOUT EARLIER?

10:49AM 20 A. CORRECT.

10:49AM 21 Q. IF I COULD ASK YOU TO TURN BACK IN YOUR BINDER ONE TAB TO

10:49AM 22 2729.

10:49AM 23 AND AT 2729, DO YOU SEE ANOTHER LAB REPORT FOR YOU FROM A

10:50AM 24 COLLECTION ON THAT SAME DAY, BUT THIS TIME FROM ACCESS MEDICAL

10:50AM 25 LABORATORIES?

10:50AM 1 A. YES, I DO.

10:50AM 2 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2729.

10:50AM 3 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:50AM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:50AM 5 (GOVERNMENT'S EXHIBIT 2729 WAS RECEIVED IN EVIDENCE.)

10:50AM 6 MR. BOSTIC:

10:50AM 7 Q. OKAY. SO, MR. BINGHAM, IF WE ZOOM IN ON THE TOP PORTION,

10:50AM 8 DO WE SEE THAT THIS IS FROM ACCESS MEDICAL LABORATORIES?

10:50AM 9 IS THAT ANOTHER BLOOD TESTING LAB?

10:50AM 10 A. YES. IT'S THE ONE THAT MY PHYSICIAN USED.

10:50AM 11 Q. AND DID YOUR PHYSICIAN SEND YOU TO THIS LAB ON THIS DATE?

10:50AM 12 A. HE TOOK THE DRAW AND THEN SENT IT TO THEM.

10:50AM 13 Q. OKAY. AND THE COLLECTION DATE HERE IS AUGUST 27TH, 2015;

10:50AM 14 IS THAT RIGHT?

10:50AM 15 A. CORRECT.

10:50AM 16 Q. AND WAS THAT THE SAME DATE AS THE BLOOD DRAW FROM

10:50AM 17 THERANOS?

10:50AM 18 A. YES, IT WAS.

10:50AM 19 Q. DID YOU INTENTIONALLY VISIT BOTH LABS ON THE SAME DATE?

10:50AM 20 A. YES, I DID.

10:50AM 21 Q. AND WHY DID YOU CHOOSE TO DO IT THAT WAY?

10:51AM 22 A. BECAUSE I FIGURED I SHOULD BE AS CLOSE AS POSSIBLE.

10:51AM 23 Q. WAS THIS FOR A COMPARISON PURPOSE?

10:51AM 24 A. FOR COMPARISON PURPOSES.

10:51AM 25 Q. LET'S LOOK FURTHER DOWN ON THAT PAGE.

10:51AM 1 AND DO YOU SEE UNDER COMPLETE BLOOD COUNT THERE'S A LINE
10:51AM 2 FOR PLATELET COUNT?

10:51AM 3 A. YES, I SEE IT.

10:51AM 4 Q. AND DO YOU SEE INDICATED THERE IS THE NUMBER 756?

10:51AM 5 A. YES, I DO.

10:51AM 6 Q. AND COMPARING THOSE TWO RESULTS, THE 909 FROM THERANOS AND
10:51AM 7 THE 756 FROM THE CONVENTIONAL LAB, WAS THERE ONE OF THOSE THAT
10:51AM 8 LINED UP MORE WITH HOW YOUR SYMPTOMS WERE PRESENTING THAT DAY?

10:51AM 9 A. YES, THIS LAB, THE ACCESS LAB.

10:51AM 10 Q. OKAY. WE CAN SET THAT ASIDE.

10:51AM 11 AFTER YOU RECEIVED THOSE AUGUST RESULTS AND YOU DID THE
10:51AM 12 COMPARISON, DID YOU TAKE ANY ACTION?

10:52AM 13 A. YEAH. SHORTLY THEREAFTER, AFTER COMMUNICATING WITH MY
10:52AM 14 DOCTOR, I ENDED UP CALLING.

10:52AM 15 Q. AND YOU SAID THAT YOU CALLED.

10:52AM 16 WHO DID YOU CALL AT THAT TIME?

10:52AM 17 A. THE NUMBER FOR THERANOS.

10:52AM 18 Q. DO YOU REMEMBER THE DATE OF YOUR CALL TO THERANOS?

10:52AM 19 A. NOT EXACTLY. IT WAS EARLY IN SEPTEMBER.

10:52AM 20 Q. OKAY.

10:52AM 21 A. LIKE THE 10TH OR SOMETHING. LIKE THE 10TH OR SOMEWHERE
10:52AM 22 AROUND THERE.

10:52AM 23 Q. WOULD LOOKING AT A COMPLAINT LOG ENTRY FROM YOUR CALL ON
10:52AM 24 THAT DAY REFRESH YOUR MEMORY ABOUT WHEN IT WAS?

10:52AM 25 A. YEAH, UH-HUH.

10:52AM 1 Q. IF I COULD ASK YOU TO LOOK AT TAB 5841 IN YOUR BINDER.

10:53AM 2 ACTUALLY, THE PRINT HERE IS SO SMALL.

10:53AM 3 YOUR HONOR, COULD WE DISPLAY THIS ONLY FOR THE WITNESS --

10:53AM 4 THE COURT: YES.

10:53AM 5 MR. BOSTIC: -- SO THAT WE CAN ZOOM IN?

10:53AM 6 THE COURT: SURE.

10:53AM 7 MR. BOSTIC: SO, MS. WACHS, IF WE CAN DISPLAY FOR

10:53AM 8 THE WITNESS PAGE 16 OF TAB 5841.

10:53AM 9 AND IF WE CAN ZOOM IN ON IT.

10:53AM 10 THE WITNESS: I CAN SEE IT.

10:53AM 11 BY MR. BOSTIC:

10:53AM 12 Q. OKAY. CAN YOU SEE YOUR NAME LISTED THERE AS SOMEONE WHO

10:53AM 13 CALLED THERANOS?

10:53AM 14 A. UH-HUH.

10:53AM 15 Q. I'LL JUST ASK YOU TO TAKE A MOMENT TO REVIEW THAT ROW TO

10:53AM 16 YOURSELF WITHOUT READING IT OUT LOUD.

10:53AM 17 A. YES. MOVE IT A HAIR, A LITTLE BIT. THAT'S GOOD. OKAY.

10:53AM 18 Q. DOES THAT REFRESH YOUR MEMORY ABOUT THE DATE ON WHICH YOU

10:54AM 19 MADE THAT PHONE CALL TO THERANOS?

10:54AM 20 A. YEAH. IT SAID SEPTEMBER 12TH.

10:54AM 21 Q. SO I'LL ASK YOU TO JUST LOOK AT THAT TABLE ONE MORE TIME

10:54AM 22 AT THE DATE ON THE FAR LEFT?

10:54AM 23 A. UH-HUH.

10:54AM 24 Q. AND DO YOU SEE A DATE INDICATING A CALL IN OCTOBER 2015?

10:54AM 25 A. OH, THAT'S WHAT I MEAN. SORRY.

10:54AM 1 LET'S SEE. YEAH, 10/12/2015.

10:54AM 2 Q. DID YOU CALL THERANOS IN OCTOBER OF 2015?

10:54AM 3 A. YES.

10:54AM 4 Q. AND WHAT WAS THE PURPOSE OF YOUR CALL TO THERANOS AT THAT
10:54AM 5 TIME?

10:54AM 6 A. I WANTED THEM TO KNOW -- BECAUSE I WANTED IT TO WORK, IT
10:54AM 7 WAS CONVENIENT, I WANTED TO LET THEM KNOW THAT THE PLATELETS
10:55AM 8 WEREN'T MATCHING UP WITH WHAT THEY -- THAT THEIR RESULTS WERE
10:55AM 9 INCORRECT.

10:55AM 10 Q. AND YOU SAID YOU WANTED IT TO WORK.

10:55AM 11 WHY DID YOU WANT THERANOS TO BE A LAB THAT YOU COULD RELY
10:55AM 12 ON?

10:55AM 13 A. CONVENIENCE.

10:55AM 14 Q. AND YOU MENTIONED THE COST EARLIER AS WELL.

10:55AM 15 A. YEAH, THE COST AND CONVENIENCE.

10:55AM 16 Q. DURING THAT CALL, DO YOU REMEMBER WHOM YOU SPOKE TO?

10:55AM 17 A. NO, I DON'T.

10:55AM 18 Q. DO YOU REMEMBER WHETHER DURING THAT CALL YOU GOT ANY
10:55AM 19 EXPLANATIONS FOR THE RESULTS THAT YOU WERE SEEING?

10:55AM 20 A. NO. I DON'T EVEN KNOW IF, IF THIS RECORDED A MESSAGE OR
10:55AM 21 NOT. I CAN'T REMEMBER.

10:55AM 22 Q. ALL RIGHT. DO YOU RECALL WHETHER THIS WAS THE ONLY
10:55AM 23 POTENTIAL CONVERSATION THAT YOU HAD WITH SOMEONE AT THERANOS,
10:55AM 24 OR WERE THERE ANY FOLLOW-UP DISCUSSIONS?

10:55AM 25 A. I WOULD HAVE CONVERSATIONS WITH PEOPLE WHO DREW MY BLOOD.

10:56AM 1 Q. AND -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

10:56AM 2 A. BUT THEY COULDN'T EVER ANSWER.

10:56AM 3 Q. WHAT QUESTIONS WERE YOU ASKING THOSE PEOPLE?

10:56AM 4 AND LET ME START JUST BY CLARIFYING. ARE YOU TALKING

10:56AM 5 ABOUT THE INDIVIDUALS WHO WORKED FOR THERANOS OR WALGREENS WHO

10:56AM 6 WERE DRAWING THE BLOOD FOR THESE TESTS?

10:56AM 7 A. YEAH, THE PEOPLE WHO WOULD ACTUALLY DRAW THE BLOOD.

10:56AM 8 Q. AND WHAT QUESTIONS WERE YOU ASKING THEM?

10:56AM 9 A. FOR WHEN THEY STOPPED DOING THE FINGER PRICK AND STARTED

10:56AM 10 DRAWING CONVENTIONALLY, I ASKED THEM WHY THEY WERE DOING THAT.

10:56AM 11 Q. SO LET ME CIRCLE BACK TO THAT THEN.

10:56AM 12 YOU TESTIFIED THAT FOR THE FIRST TEST THAT YOU HAD, THE

10:56AM 13 BLOOD WAS DRAWN BY A FINGERSTICK; IS THAT RIGHT?

10:56AM 14 A. YES.

10:56AM 15 Q. AT SOME POINT DID YOU HAVE THERANOS TESTS THAT WERE DRAWN

10:56AM 16 BY A VEIN DRAW INSTEAD OF THE FINGERSTICK?

10:56AM 17 A. YES.

10:56AM 18 Q. DO YOU RECALL WHEN THAT SWITCH HAPPENED?

10:56AM 19 A. I VAGUELY REMEMBER AT LEAST TWO, SO I THINK THOSE WERE THE

10:57AM 20 FIRST TWO.

10:57AM 21 Q. WHEN YOU WERE GETTING VEIN DRAWS, YOU TESTIFIED THAT YOU

10:57AM 22 ASKED THE STAFF THERE WHY THAT WAS HAPPENING; IS THAT RIGHT?

10:57AM 23 A. CORRECT.

10:57AM 24 Q. AND WHAT KINDS OF RESPONSES DID YOU GET BACK?

10:57AM 25 A. WE DON'T KNOW. THEY -- IT WAS JUST AN ANSWER THAT IS MORE

10:57AM 1 OF, LIKE, SAYING IT WAS OUT OF THEIR PROVINCE TO KNOW WHY.

10:57AM 2 Q. FOLLOWING THOSE EXPERIENCES AND YOUR CALL TO THERANOS IN

10:57AM 3 OCTOBER 2015, DID YOU USE THE LAB AGAIN AFTER THAT?

10:57AM 4 A. I USED IT ONE LAST TIME.

10:57AM 5 Q. AND IF I COULD ASK YOU TO LOOK AT 5843 IN YOUR BINDER.

10:57AM 6 A. OKAY.

10:57AM 7 Q. AND AT 5843, DO YOU SEE AN EMAIL MEMORIALIZING A VISIT

10:57AM 8 AFTER OCTOBER 2015?

10:57AM 9 A. YES, DECEMBER 11TH, 2015.

10:58AM 10 Q. ALL RIGHT.

10:58AM 11 YOUR HONOR, THE GOVERNMENT OFFERS 5843.

10:58AM 12 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:58AM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:58AM 14 (GOVERNMENT'S EXHIBIT 5843 WAS RECEIVED IN EVIDENCE.)

10:58AM 15 BY MR. BOSTIC:

10:58AM 16 Q. AND, MR. BINGHAM, DO YOU SEE HERE THERE'S AN EMAIL

10:58AM 17 MEMORIALIZING --

10:58AM 18 THE COURT: THE MONITORS ARE NOT ON. LET'S SEE.

10:58AM 19 ARE THEY ON? NO.

10:58AM 20 JUROR: IT TAKES TIME.

10:58AM 21 THE COURT: NOW THEY'RE ON.

10:58AM 22 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:58AM 23 Q. MR. BINGHAM, IS THIS AN EMAIL CONFIRMING A VISIT TO

10:58AM 24 THERANOS WHERE YOU WENT THERE ON DECEMBER 11TH, 2015?

10:58AM 25 A. CORRECT.

10:58AM 1 Q. WHY GO BACK TO THERANOS IN DECEMBER GIVEN THE EXPERIENCES
10:58AM 2 THAT YOU HAD HAD IN AUGUST AND OCTOBER?
10:59AM 3 A. I WANTED TO SEE ONE LAST TIME IF IT WAS GOING TO BE IN
10:59AM 4 LINE WITH WHAT MY EXPECTATIONS WERE.
10:59AM 5 Q. HAD YOU HAD ANY COMMUNICATIONS WITH THERANOS IN BETWEEN
10:59AM 6 YOUR CALL AND THIS TIME THAT HAD INCREASED YOUR CONFIDENCE?
10:59AM 7 A. NO.
10:59AM 8 Q. IF I COULD ASK YOU TO LOOK AT 5838.
10:59AM 9 AND ONCE YOU GET THERE.
10:59AM 10 A. OKAY.
10:59AM 11 Q. FOR THE VISIT TO THERANOS IN DECEMBER 2015, DO YOU STILL
10:59AM 12 HAVE A COPY OF THE RESULTS THEMSELVES?
10:59AM 13 A. NO, I DO NOT.
10:59AM 14 Q. AT 5838, ARE YOU LOOKING AT A MESSAGE THAT YOU RECEIVED
11:00AM 15 FROM THERANOS FOLLOWING THAT?
11:00AM 16 A. YES.
11:00AM 17 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5838.
11:00AM 18 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
11:00AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:00AM 20 (GOVERNMENT'S EXHIBIT 5838 WAS RECEIVED IN EVIDENCE.)
11:00AM 21 BY MR. BOSTIC:
11:00AM 22 Q. SO, MR. BINGHAM, IS THIS AN EMAIL THAT YOU RECEIVED A FEW
11:00AM 23 DAYS AFTER THAT DECEMBER 11TH VISIT TO THERANOS?
11:00AM 24 A. YES, IT WAS A FEW DAYS THE FOLLOWING WEEK.
11:00AM 25 Q. IT SAYS HERE, "HI MR. BINGHAM,

11:00AM 1 "OUR LABORATORY STAFF RECENTLY CONTACTED YOU OR YOUR
11:00AM 2 DESIGNATED EMERGENCY CONTACT REGARDING A LAB RESULT THAT MAY
11:00AM 3 INDICATE THE NEED FOR IMMEDIATE MEDICAL ATTENTION."

11:00AM 4 DO YOU SEE THAT?

11:00AM 5 A. YES.

11:00AM 6 Q. HAD YOU RECEIVED ONE OF THESE ALERT MESSAGES BEFORE FROM
11:00AM 7 THERANOS?

11:00AM 8 A. NO, I HAD NOT.

11:00AM 9 Q. AROUND THIS TIME PERIOD, TELL US ABOUT YOUR SYMPTOMS, IF
11:00AM 10 YOU REMEMBER. WERE THEY UNIQUE IN ANY WAY?

11:00AM 11 A. NO. I WAS FEELING PRETTY NORMAL.

11:01AM 12 Q. WERE YOU FEELING THE SAME WAY THAT YOU WOULD FEEL WHEN YOU
11:01AM 13 WOULD GET YOUR TYPICAL RESULTS BACK SHOWING A PLATELET LEVEL OF
11:01AM 14 ABOUT 700?

11:01AM 15 A. THAT'S CORRECT.

11:01AM 16 Q. FOLLOWING THIS LAST VISIT TO THERANOS, DID YOU CONTINUE TO
11:01AM 17 USE THE LAB?

11:01AM 18 A. NO. THIS WAS THE ICING ON THE CAKE. THEY HADN'T REACHED
11:01AM 19 OUT TO ME AT ALL. THIS IS ALL I GOT.

11:01AM 20 AND I ACTUALLY LAUGHED WHEN I READ IT BECAUSE I JOKED TO
11:01AM 21 MY WIFE, WELL, I GUESS I SHOULD GO TO THE EMERGENCY ROOM. BUT
11:01AM 22 I KNEW I DIDN'T NEED TO.

11:01AM 23 Q. SO I THINK YOU MAYBE JUST EXPLAINED IT, BUT WHY WAS THIS
11:01AM 24 FUNNY TO YOU AT THE TIME?

11:01AM 25 A. BECAUSE IT WAS WRONG.

11:01AM 1 Q. AND DID THIS FINAL EXPERIENCE HAVE ANY EFFECT ON YOUR
11:01AM 2 WILLINGNESS TO GO TO THERANOS AGAIN IN THE FUTURE?

11:02AM 3 A. YEAH. I NEVER WENT AGAIN.

11:02AM 4 Q. WHEN YOU DID GO TO THERANOS, YOU TOLD US A LITTLE BIT
11:02AM 5 ABOUT THE EXPERIENCE THAT YOU HAD THERE.

11:02AM 6 ASIDE FROM THE ANSWERS, OR NONANSWERS, THAT YOU GOT TO THE
11:02AM 7 QUESTION ABOUT THE VEIN DRAWS, DID YOU FIND THE STAFF WORKING
11:02AM 8 AT THOSE LOCATIONS TO BE POLITE AND PROFESSIONAL?

11:02AM 9 A. YES, I DID.

11:02AM 10 Q. HOW ABOUT THE FACILITIES THEMSELVES? WERE THEY CLEAN AND
11:02AM 11 WELCOMING?

11:02AM 12 A. YEAH, IT WAS A GOOD SETUP.

11:02AM 13 Q. SO AS FAR AS THE ACTUAL EXPERIENCE OF VISITING THERANOS
11:02AM 14 AND HAVING THE BLOOD DRAWN, WAS THAT A RELATIVELY PLEASANT
11:02AM 15 EXPERIENCE?

11:02AM 16 A. YES.

11:02AM 17 Q. AS A PATIENT, WHAT IS MORE IMPORTANT TO YOU, HAVING THAT
11:02AM 18 KIND OF PLEASANT EXPERIENCE, OR HAVING BLOOD TEST RESULTS THAT
11:02AM 19 ARE ACCURATE AND RELIABLE?

11:02AM 20 A. ACCURATE AND RELIABLE IS WHAT I NEED.

11:03AM 21 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

11:03AM 22 THE COURT: YES.

11:03AM 23 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

11:03AM 24 MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.

11:03AM 25 THE COURT: CROSS-EXAMINATION?

CROSS-EXAMINATION

11:03AM 1

11:03AM 2

BY MR. COOPERSMITH:

11:03AM 3

Q. GOOD MORNING, MR. BINGHAM.

11:03AM 4

A. GOOD MORNING.

11:03AM 5

Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI
IN THIS CASE.

11:03AM 6

11:03AM 7

A. UH-HUH.

11:03AM 8

Q. AND I'M GOING TO ASK YOU SOME QUESTIONS TO FOLLOW UP ON
SOME OF THE THINGS THAT MR. BOSTIC ASKED.

11:03AM 9

11:03AM 10

OKAY?

11:03AM 11

A. OKAY.

11:03AM 12

Q. SO TO START WITH, MR. BOSTIC, ON DIRECT EXAMINATION,
TALKED ABOUT A CALL THAT YOU HAD MADE AT ONE POINT TO THERANOS.

11:03AM 13

11:03AM 14

A. CORRECT.

11:03AM 15

Q. AND YOU SPOKE TO SOMEONE THERE?

11:04AM 16

A. I THINK IT WAS A RECORDING. I JUST RECORDED THE MESSAGE.

11:04AM 17

Q. OKAY. I THINK HE SHOWED YOU SOMETHING TO REFRESH YOUR
MEMORY, AND THAT WAS ON OCTOBER 12TH OF 2015.

11:04AM 18

11:04AM 19

DO YOU REMEMBER THAT?

11:04AM 20

A. YES.

11:04AM 21

Q. OKAY. AND WHEN YOU CALLED, YOU DON'T REMEMBER WHO THE
OTHER SIDE OF THE LINE, WHETHER IT WAS A RECORDING OR A REAL
PERSON, YOU DON'T KNOW WHERE THEY ACTUALLY WERE, DO YOU?

11:04AM 22

11:04AM 23

11:05AM 24

A. NO, I DO NOT.

11:05AM 25

Q. YEAH. AND YOU LIVE IN ARIZONA?

11:05AM 1

A. YES.

11:05AM 2

Q. AND SO THEY COULD HAVE BEEN IN ARIZONA FOR ALL YOU KNOW;

11:05AM 3

RIGHT?

11:05AM 4

A. YEAH. I TALKED TO EMPLOYEES WHEN I WENT TO GET MY BLOOD

11:05AM 5

DRAWS AND THEY TOLD ME THAT THEY HAD A FACILITY IN --

11:05AM 6

MR. BOSTIC: OBJECTION. HEARSAY.

11:05AM 7

THE COURT: SUSTAINED.

11:05AM 8

THAT LAST RESPONSE IS STRICKEN, LADIES AND GENTLEMEN.

11:05AM 9

BY MR. COOPERSMITH:

11:05AM 10

Q. OKAY. SO PUTTING ASIDE WHAT ANYONE SAID TO YOU, YOU

11:05AM 11

VISITED WALGREENS IN ARIZONA; CORRECT?

11:05AM 12

A. CORRECT.

11:05AM 13

Q. YEAH. AND, AGAIN, JUST SO WE'RE CLEAR FOR THE RECORD,

11:05AM 14

WHEN YOU MADE THAT CALL IN OCTOBER OF 2015, YOU DON'T KNOW

11:05AM 15

WHERE THE PERSON OR RECORDING WAS LOCATED ON THE OTHER SIDE OF

11:05AM 16

THE LINE; CORRECT?

11:05AM 17

A. CORRECT.

11:05AM 18

Q. OKAY. SO LET'S JUST TALK ABOUT THE TESTING FOR A MINUTE.

11:05AM 19

SO YOU HAD A TOTAL OF FOUR TESTS AT THERANOS; CORRECT?

11:05AM 20

A. CORRECT.

11:05AM 21

Q. AND THE FIRST TEST THAT YOU HAD, WAS THAT A VENOUS DRAW OR

11:05AM 22

A FINGERSTICK?

11:05AM 23

A. FINGERSTICK.

11:05AM 24

Q. AND WHEN I SAY "VENOUS DRAW" -- WE HAVE TO BE CAREFUL NOT

11:05AM 25

TO TALK OVER EACH OTHER.

11:05AM 1 WHEN I SAY "VENOUS DRAW," DO YOU UNDERSTAND THAT'S THE
11:05AM 2 TYPICAL WAY OF BLOOD BEING DRAWN FROM THE ARM?

11:05AM 3 A. YES, I DO.

11:05AM 4 Q. AND FINGERSTICK IS JUST A LITTLE PRICK ON THE FINGER;
11:06AM 5 RIGHT?

11:06AM 6 A. YES.

11:06AM 7 Q. AND THE VERY FIRST TEST THAT YOU TOOK, YOU RECALL THAT
11:06AM 8 BEING A FINGERSTICK?

11:06AM 9 A. YES.

11:06AM 10 Q. OKAY. I THINK YOU SAID ON DIRECT THAT BECAUSE OF YOUR
11:06AM 11 CONDITION -- AND I'M SORRY ABOUT THAT -- BUT BECAUSE OF THE
11:06AM 12 CONDITION THAT YOU HAVE, YOU HAVE TO GET BLOOD TESTS TO MONITOR
11:06AM 13 YOUR PLATELET COUNT; RIGHT?

11:06AM 14 A. YES.

11:06AM 15 Q. AND YOU HAD BEEN DOING THIS FOR HOW MANY YEARS BEFORE YOU
11:06AM 16 STARTED GOING TO THERANOS?

11:06AM 17 A. SINCE I WAS DIAGNOSED.

11:06AM 18 Q. AND ABOUT WHEN WAS THAT?

11:06AM 19 A. 2010.

11:06AM 20 Q. OKAY. SO BY THE TIME YOU WENT TO THERANOS, IT HAD ALREADY
11:06AM 21 BEEN AROUND FIVE YEARS THAT YOU HAD BEEN HAVING THESE BLOOD
11:06AM 22 TESTS?

11:06AM 23 A. YES.

11:06AM 24 Q. OKAY. AND ALL OF THE OTHER BLOOD TESTS THAT YOU HAD
11:06AM 25 BEFORE YOU FIRST WENT TO THERANOS, WERE THEY ALL VENOUS DRAW OR

11:06AM 1 WERE SOME OF THEM FINGERSTICK?

11:06AM 2 A. ALL VENOUS DRAW.

11:06AM 3 Q. ALL VENOUS DRAW. OKAY.

11:06AM 4 THE SECOND, THIRD, AND FOURTH TESTS, THE OTHER THREE TESTS

11:06AM 5 AFTER THAT FIRST ONE AT THERANOS, DO YOU RECALL WHETHER THEY

11:06AM 6 WERE VENOUS DRAW OR FINGERSTICK?

11:07AM 7 A. I DO NOT RECALL CLEARLY.

11:07AM 8 I THINK I HAD TWO FINGER PRICKS TOTAL.

11:07AM 9 Q. OKAY. I WANT TO SHOW YOU SOMETHING TO SEE IF I COULD

11:07AM 10 REFRESH YOUR MEMORY ABOUT THAT.

11:07AM 11 A. OKAY.

11:07AM 12 Q. AND IN -- LET ME HAND YOU A BINDER. ONE MINUTE.

11:07AM 13 MAY I APPROACH, YOUR HONOR?

11:07AM 14 THE COURT: YES.

11:07AM 15 MR. COOPERSMITH: (HANDING.)

11:07AM 16 THANK YOU.

11:07AM 17 Q. OKAY. MR. BINGHAM, THERE'S A SERIES OF TABS WITH NUMBERS

11:07AM 18 THERE.

11:07AM 19 IF YOU COULD TURN TO TAB 28131.

11:08AM 20 A. I'M THERE.

11:08AM 21 Q. AND DO YOU SEE THAT THIS IS A MEMO REFLECTING A PRIOR

11:08AM 22 INTERVIEW YOU GAVE TO PEOPLE AT THE U.S. GOVERNMENT?

11:08AM 23 A. YES.

11:08AM 24 Q. AND YOU REMEMBER THAT?

11:08AM 25 A. YES.

11:08AM 1 Q. OKAY. AND IF YOU COULD TURN TO THE SECOND PAGE, AND IF
11:08AM 2 YOU GO TO THE THIRD FULL PARAGRAPH, AND IT'S A VERY SHORT
11:08AM 3 PARAGRAPH, AND IT CONSISTS OF ONLY ONE SENTENCE STARTING WITH
11:08AM 4 THE WORD "THERANOS USED."

11:08AM 5 DO YOU SEE THAT?

11:08AM 6 A. YES.

11:08AM 7 Q. AND IF YOU COULD READ IT OUT TO YOURSELF, PLEASE. NOT OUT
11:08AM 8 LOUD.

11:09AM 9 AND DOES THAT REFRESH YOUR MEMORY THAT THE FIRST TEST YOU
11:09AM 10 HAD AT THERANOS WAS FINGERSTICK, AND THE REMAINDER VISITS WERE
11:09AM 11 USING THE VEIN DRAW?

11:09AM 12 A. YES.

11:09AM 13 Q. THANK YOU, MR. BINGHAM.

11:09AM 14 OKAY. DURING YOUR DIRECT EXAMINATION YOU SAW A -- ONE
11:09AM 15 THERANOS REPORT WITH SOME LAB RESULTS FOR YOU.

11:09AM 16 DO YOU REMEMBER THAT ON DIRECT EXAMINATION?

11:09AM 17 A. COULD YOU REPEAT?

11:09AM 18 Q. I CAN MAKE IT EVEN MORE CLEAR. MY APOLOGIES.

11:09AM 19 IF YOU COULD TAKE A LOOK IN THE BINDER THAT THE GOVERNMENT
11:09AM 20 HANDED YOU, MR. BOSTIC HANDED YOU, IF YOU COULD GO TO
11:09AM 21 EXHIBIT 22 -- I'M SORRY, 2730.

11:09AM 22 A. I'M THERE.

11:09AM 23 Q. AND THAT WAS A REPORT FROM THERANOS THAT YOU RECEIVED
11:10AM 24 BASED ON A VISIT THAT YOU HAD FOR A BLOOD TEST ON AUGUST 27TH
11:10AM 25 OF 2015; IS THAT RIGHT?

11:10AM 1 A. CORRECT.

11:10AM 2 Q. OKAY. AND OTHER THAN THAT REPORT, THE OTHER REPORTS THAT

11:10AM 3 YOU HAD FOR VISITS AT THERANOS, THE OTHER THREE, I THINK YOU

11:10AM 4 SAID YOU NO LONGER HAVE COPIES OF THOSE REPORTS; IS THAT RIGHT?

11:10AM 5 A. NO, I DO NOT.

11:10AM 6 Q. YOU DON'T. OKAY.

11:10AM 7 BUT I THINK YOU ALSO SAID ON DIRECT THAT YOU AT ONE POINT

11:10AM 8 WERE ABLE TO ACCESS THOSE REPORTS ON THERANOS'S WEBSITE?

11:10AM 9 A. YES.

11:10AM 10 Q. AND YOU HAD, LIKE, A PASSCODE TO BE ABLE TO GET INTO THAT

11:10AM 11 SYSTEM?

11:10AM 12 A. I THINK THAT'S HOW IT WORKED, YEAH.

11:10AM 13 Q. OKAY. AND DID YOU DISCUSS WITH THE GOVERNMENT WHETHER YOU

11:10AM 14 COULD OBTAIN ANY OF THESE OTHER REPORTS?

11:10AM 15 A. WHETHER I WHAT?

11:10AM 16 Q. DID YOU DISCUSS WITH THE GOVERNMENT WHETHER YOU COULD

11:10AM 17 OBTAIN ANY OF THESE OTHER THREE REPORTS THAT WE DON'T HAVE IN

11:10AM 18 COURT TODAY?

11:10AM 19 A. I TRIED, YEAH.

11:10AM 20 Q. OKAY. DID YOU WORK WITH THE GOVERNMENT ON THAT?

11:11AM 21 A. NO.

11:11AM 22 Q. OKAY. AND DID THEY EVER TELL YOU THAT THEY HAD ANY

11:11AM 23 ABILITY TO RECOVER ANY OF THOSE REPORTS?

11:11AM 24 MR. BOSTIC: OBJECTION. HEARSAY. 401.

11:11AM 25 THE WITNESS: NO.

11:11AM 1 THE COURT: SUSTAINED.

11:11AM 2 THE LAST ANSWER IS STRICKEN, LADIES AND GENTLEMEN.

11:11AM 3 BY MR. COOPERSMITH:

11:11AM 4 Q. SO YOU JUST TRIED ON YOUR OWN TO SEE IF YOU COULD FIND
11:11AM 5 THOSE; IS THAT RIGHT?

11:11AM 6 A. THE REASON WHY I HAD THIS ONE IS BECAUSE I COPIED IT TO
11:11AM 7 SHOW IT TO MY DOCTOR, SO IT WAS IN MY GMAIL ACCOUNT. SO IT WAS
11:11AM 8 EASY TO RECOVER.

11:11AM 9 I DON'T HAVE ACCESS TO THE OTHERS.

11:11AM 10 Q. OKAY. SO YOU WERE NOT ABLE TO RECOVER ANY OTHER REPORTS,
11:11AM 11 RESULTS FROM THE THERANOS SYSTEM WHEN YOU TRIED TO DO THAT; IS
11:11AM 12 THAT RIGHT.

11:11AM 13 A. YEAH.

11:11AM 14 Q. OKAY. I THINK YOU TESTIFIED ON DIRECT THAT YOU HAD
11:11AM 15 UNDERSTOOD, GOING INTO YOUR FIRST VISIT AT THERANOS, THAT
11:12AM 16 THERANOS WAS WORKING TO DO TESTING ON FINGERSTICK SAMPLES;
11:12AM 17 RIGHT?

11:12AM 18 A. YES.

11:12AM 19 Q. AND, IN FACT, THE FIRST TIME YOU WENT IN, THAT'S WHAT
11:12AM 20 HAPPENED; RIGHT?

11:12AM 21 A. YES.

11:12AM 22 Q. BUT THEN THE OTHER TIMES YOU HAD VENOUS DRAWS; RIGHT?

11:12AM 23 A. YES.

11:12AM 24 Q. AND YOU WEREN'T ABLE TO FIGURE OUT WHY THAT WAS BASED ON
11:12AM 25 THE CONVERSATIONS THAT YOU WERE HAVING; RIGHT?

11:12AM 1 A. I WAS NOT ABLE TO.

11:12AM 2 Q. OKAY. MAYBE THIS IS AN OBVIOUS QUESTION, BUT WHEN YOU HAD
11:12AM 3 A VENOUS DRAW, YOU KNEW WHAT WAS HAPPENING; RIGHT? YOU KNEW
11:12AM 4 THEY WERE TAKING A VENOUS DRAW FROM YOUR ARM AS OPPOSED TO YOUR
11:12AM 5 FINGER; RIGHT?

11:12AM 6 A. I HOPE SO, YES.

11:12AM 7 Q. RIGHT. BECAUSE THERE WAS A PERSON, A PHLEBOTOMIST. YOU
11:12AM 8 KNOW THAT TERM?

11:12AM 9 A. YES, I DO.

11:12AM 10 Q. AND THAT PERSON ACTUALLY TOOK A NEEDLE AND PUT IT IN A
11:12AM 11 VEIN IN YOUR ARM; RIGHT?

11:12AM 12 A. YES. I'VE HAD MANY.

11:12AM 13 Q. AND WHEN YOU SAW THAT HAPPENING, IF YOU WANTED TO LEAVE
11:12AM 14 THE ROOM AND, YOU KNOW, TO DECLINE THE TEST, YOU COULD HAVE
11:12AM 15 DONE THAT; RIGHT?

11:13AM 16 A. IF I WANTED TO, YES.

11:13AM 17 Q. RIGHT. BUT YOU DECIDED TO GO FORWARD, BECAUSE YOU WANTED
11:13AM 18 TO HAVE YOUR BLOOD TESTED; RIGHT?

11:13AM 19 A. YES.

11:13AM 20 Q. OKAY. SO I THINK YOU DESCRIBED THAT THERE WAS -- YOU
11:13AM 21 KNOW, BASED ON HOW YOU FEEL AND YOUR MONITORING OF YOUR OWN
11:13AM 22 CONDITION, YOU SEE A KIND OF CORRELATION BETWEEN THE PLATELET
11:13AM 23 LEVEL RESULTS AND HOW YOU FEEL; IS THAT RIGHT?

11:13AM 24 A. CORRECT.

11:13AM 25 Q. OKAY. BUT WHEN YOU GO OVER TIME AND HAVE TAKEN LAB TESTS

11:13AM 1 AT OTHER LABS, EVEN BESIDES THERANOS, YOUR RESULTS ARE NOT
11:13AM 2 ALWAYS PRECISELY THE SAME INDICATING EXACTLY HOW YOU FEEL;
11:13AM 3 RIGHT?

11:13AM 4 AND LET ME ASK A BETTER QUESTION AND I'LL WITHDRAW THAT
11:13AM 5 ONE.

11:13AM 6 SO, FOR EXAMPLE, IF YOU'RE FEELING FINE -- AND I'M HOPING
11:13AM 7 YOU'RE FEELING FINE TODAY -- BUT IF YOU'RE FEELING FINE AND YOU
11:13AM 8 TAKE A BLOOD TEST, YOUR RESULTS MIGHT BE IN THE 700 LEVEL; IS
11:13AM 9 THAT RIGHT?

11:13AM 10 A. RIGHT.

11:14AM 11 Q. BUT IT COULD BE 702 OR 710 OR 720? IT'S NOT ALWAYS
11:14AM 12 PRECISELY THE SAME; CORRECT?

11:14AM 13 A. CORRECT.

11:14AM 14 Q. SO IF YOU'RE FEELING FINE AND YOU GET A BLOOD TEST, THOSE
11:14AM 15 RESULTS FROM THE LAB COULD VARY, YOU KNOW, BY WHATEVER AMOUNT;
11:14AM 16 IS THAT FAIR?

11:14AM 17 A. YES.

11:14AM 18 Q. OKAY. BUT THEN WHEN IT GETS TO A SIGNIFICANTLY HIGHER
11:14AM 19 LEVEL, THAT GENERALLY CORRELATES WITH HOW YOU FEEL; RIGHT?

11:14AM 20 A. CORRECT.

11:14AM 21 Q. BUT YOUR LEVELS AT TIMES HAVE BEEN AS HIGH AS 900 OR SO;
11:14AM 22 IS THAT RIGHT?

11:14AM 23 A. OTHER THAN 1.2 OR -3 MILLION, YEAH.

11:14AM 24 Q. OKAY. SO EVEN HIGHER THAN 900.

11:14AM 25 AND ONE OF THE -- ARE YOU AWARE FROM YOUR OWN EXPERIENCE

11:14AM 1 FROM YOUR OWN CONDITION THAT ONE OF THE THINGS THAT COULD
11:14AM 2 UNFORTUNATELY HAPPEN WITH A PERSON WITH HIGH PLATELET COUNTS IS
11:14AM 3 THAT THERE'S A DANGER OF BLOOD CLOTS?
11:14AM 4 A. I'M VERY AWARE OF THAT.
11:15AM 5 Q. RIGHT. AND THAT'S ONE REASON, I'M ASSUMING, THAT YOU
11:15AM 6 MONITOR THIS AND TAKE BLOOD TESTS AND TAKE MEDICATIONS AT
11:15AM 7 TIMES; IS THAT RIGHT?
11:15AM 8 A. YEAH, I TAKE MEDICATION CONSISTENTLY SINCE I WAS
11:15AM 9 DIAGNOSED.
11:15AM 10 Q. RIGHT. AND YOU UNDERSTAND THE REFERENCE RANGE FOR PEOPLE
11:15AM 11 WHO DON'T HAVE THIS PARTICULAR MEDICAL CONDITION BASICALLY IS
11:15AM 12 AROUND 0 TO 400. IS THAT THE RANGE?
11:15AM 13 MR. BOSTIC: OBJECTION. MISSTATES THE TESTIMONY.
11:15AM 14 THE COURT: ARE YOU ASKING FOR HIS KNOWLEDGE?
11:15AM 15 MR. COOPERSMITH: WELL, LET ME ASK A BETTER
11:15AM 16 QUESTION.
11:15AM 17 Q. SO, MR. BINGHAM, WHAT DO YOU UNDERSTAND IS THE REFERENCE
11:15AM 18 RANGE FOR SOMEONE WHO DOESN'T HAVE THIS PARTICULAR CONDITION
11:15AM 19 THAT YOU UNFORTUNATELY SUFFER FROM?
11:15AM 20 A. 125 TO 450, SOMEWHERE AROUND THERE.
11:15AM 21 Q. SO EVEN A LEVEL OF 700 OR SO WOULD BE SIGNIFICANTLY HIGHER
11:15AM 22 THAN NORMAL RANGE; IS THAT RIGHT?
11:15AM 23 A. YES.
11:15AM 24 Q. OKAY. AND FOR SOMEONE WHO DOESN'T HAVE THIS CONDITION, IF
11:15AM 25 THEY TESTED IN THE 700S, THE LABORATORY OR THE DOCTOR MIGHT

11:16AM 1 HAVE SOME CAUSE FOR ALARM IF THE TEST WAS THAT HIGH IF THEY
11:16AM 2 DIDN'T KNOW THE PERSON HAD THIS PARTICULAR CONDITION THAT YOU
11:16AM 3 HAD; IS THAT FAIR?

11:16AM 4 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

11:16AM 5 THE COURT: SUSTAINED.

11:16AM 6 MR. COOPERSMITH: OKAY. I'LL MOVE ON, YOUR HONOR.

11:16AM 7 THANK YOU.

11:16AM 8 Q. THE PLATELET COUNT TEST THAT YOU HAD AT THERANOS, AND YOU
11:16AM 9 TESTIFIED THAT YOU DIDN'T THINK THOSE WERE CORRECT, THAT WAS
11:16AM 10 YOUR ONLY COMPLAINT ABOUT THE TEST THAT YOU HAD AT THERANOS;
11:16AM 11 CORRECT?

11:16AM 12 A. YES.

11:17AM 13 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

11:17AM 14 THE WITNESS: WELL, I'M SORRY. THE OTHER COMPLAINT
11:17AM 15 WAS THAT THEY NEVER CONTACTED ME.

11:17AM 16 BY MR. COOPERSMITH:

11:17AM 17 Q. RIGHT. SO THEY NEVER CONTACTED YOU AND THE PLATELET TEST,
11:17AM 18 AND THE PLATELET COUNT TEST SEEMED OFF, RIGHT, BUT YOU HAD NO
11:17AM 19 OTHER COMPLAINT ABOUT THE BLOOD TESTING THAT YOU HAD DONE AT
11:17AM 20 THERANOS; CORRECT?

11:17AM 21 A. CORRECT.

11:17AM 22 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

11:17AM 23 THE COURT: ANY REDIRECT?

11:17AM 24 MR. BOSTIC: NO, YOUR HONOR.

11:17AM 25 THE COURT: MAY THE WITNESS BE EXCUSED?

11:17AM 1 MR. COOPERSMITH: YES, YOUR HONOR.

11:17AM 2 MR. BOSTIC: NO, YOUR HONOR.

11:17AM 3 THE COURT: YOU'RE EXCUSED, SIR.

11:17AM 4 THE WITNESS: THANK YOU.

11:17AM 5 THE COURT: YOU'RE WELCOME.

11:17AM 6 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

11:17AM 7 MR. BOSTIC: YES, YOUR HONOR.

11:17AM 8 THE GOVERNMENT CALLS ERIN TOMPKINS.

11:17AM 9 THE COURT: DO YOU HAVE ANY IDEA OF WHAT YOUR DIRECT

11:18AM 10 WOULD BE?

11:18AM 11 MR. BOSTIC: SO I WOULD ESTIMATE 20 TO 30 MINUTES

11:18AM 12 FOR THE DIRECT, YOUR HONOR.

11:18AM 13 THE COURT: SHOULD WE TAKE A BREAK NOW? LET'S DO

11:18AM 14 THAT. LET'S TAKE OUR BREAK NOW.

11:18AM 15 THANK YOU FOR THAT INFORMATION, MR. BOSTIC.

11:18AM 16 LET'S TAKE OUR FIRST BREAK. WE'LL TAKE ABOUT 30 MINUTES,

11:18AM 17 PLEASE, AND THEN WE'LL COME BACK.

11:21AM 18 (RECESS FROM 11:18 A.M. UNTIL 11:56 A.M.)

19
20
21
22
23
24
25

AFTERNOON SESSION

11:56AM 1

11:56AM 2

THE COURT: THANK YOU. PLEASE BE SEATED.

11:56AM 3

WE'RE BACK ON THE RECORD.

11:56AM 4

THE PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

11:56AM 5

OUR JURY IS PRESENT.

11:56AM 6

MR. BOSTIC, DO YOU HAVE A WITNESS TO CALL?

11:57AM 7

MR. BOSTIC: YES, YOUR HONOR.

11:57AM 8

THE UNITED STATES CALLS ERIN TOMPKINS.

11:57AM 9

THE COURT: GOOD MORNING. IF YOU WILL COME FORWARD,

11:57AM 10

PLEASE, AND STAND OVER HERE WHILE YOU FACE OUR COURTROOM

11:57AM 11

DEPUTY, AND RAISE YOUR RIGHT HAND, SHE HAS A QUESTION FOR YOU.

11:57AM 12

(GOVERNMENT'S WITNESS, ERIN TOMPKINS, WAS SWORN.)

11:57AM 13

THE WITNESS: I DO.

11:57AM 14

THE CLERK: THANK YOU.

11:57AM 15

THE COURT: PLEASE HAVE A SEAT UP HERE. I'LL INVITE

11:57AM 16

YOU TO MAKE YOURSELF COMFORTABLE.

11:57AM 17

FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED.

11:58AM 18

THERE IS ALSO SOME WATER THERE THAT YOU CAN ENJOY IF YOU

11:58AM 19

NEED.

11:58AM 20

THE WITNESS: THANK YOU.

11:58AM 21

THE COURT: YOU'RE WELCOME.

11:58AM 22

WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

11:58AM 23

AND THEN SPELL IT, PLEASE.

11:58AM 24

THE WITNESS: YES. MY NAME IS ERIN TOMPKINS. THAT

11:58AM 25

IS SPELLED T-O-M-P-K-I-N-S.

11:58AM 1 THE COURT: THANK YOU.

11:58AM 2 COUNSEL.

11:58AM 3 MR. BOSTIC: THANK YOU, YOUR HONOR.

11:58AM 4 **DIRECT EXAMINATION**

11:58AM 5 BY MR. BOSTIC:

11:58AM 6 Q. GOOD MORNING, MS. TOMPKINS.

11:58AM 7 A. GOOD MORNING.

11:58AM 8 Q. IF YOU ARE FULLY VACCINATED AND COMFORTABLE DOING SO, I
11:58AM 9 UNDERSTAND THE COURT WILL ALLOW YOU TO TESTIFY WITHOUT A MASK.

11:58AM 10 A. I AM FULLY VACCINATED, SO I'LL GO AHEAD AND TAKE THIS OFF.

11:58AM 11 Q. LET ME START BY ASKING YOU, WAS THERE A TIME THAT YOU
11:58AM 12 RECEIVED BLOOD TESTING SERVICES FROM A COMPANY CALLED THERANOS?

11:58AM 13 A. YES.

11:58AM 14 Q. AND DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

11:58AM 15 A. I BELIEVE IT WAS MAY OF 2015.

11:58AM 16 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT YOUR EXPERIENCE
11:58AM 17 WITH THERANOS, BUT FIRST LET ME ASK YOU JUST A FEW BACKGROUND
11:58AM 18 QUESTIONS.

11:58AM 19 WHERE DO YOU LIVE CURRENTLY?

11:59AM 20 A. I CURRENTLY LIVING IN PHOENIX, ARIZONA.

11:59AM 21 Q. AND WERE YOU LIVING IN THE PHOENIX AREA IN 2015?

11:59AM 22 A. YES, I WAS.

11:59AM 23 Q. WERE YOU EMPLOYED AT THAT TIME?

11:59AM 24 A. YES, I WAS.

11:59AM 25 Q. WHERE DID YOU WORK?

11:59AM 1 A. I WAS A MUSIC DIRECTOR AT A SMALL METHODIST CONGREGATION;
11:59AM 2 I HAD PRIVATE VOICE STUDENTS; AND FOR HALF OF THE YEAR I WAS
11:59AM 3 A -- LIKE A TEACHING ARTIST FOR ARIZONA OPERA.

11:59AM 4 Q. CAN YOU GIVE US A BRIEF SUMMARY OF YOUR EDUCATIONAL
11:59AM 5 BACKGROUND POST HIGH SCHOOL?

11:59AM 6 A. YES. I HAVE A BACHELOR'S IN MUSIC FROM SOUTHERN METHODIST
11:59AM 7 UNIVERSITY.

11:59AM 8 Q. SO TURNING THEN TO YOUR CONTACT WITH THERANOS, HOW DID YOU
11:59AM 9 FIRST HEAR ABOUT THAT COMPANY?

11:59AM 10 A. I BELIEVE THE FIRST TIME WAS SEEING THE MAGAZINE ON MY
11:59AM 11 FATHER'S COFFEE TABLE, "FORBES," WITH HER ON THE COVER. I
11:59AM 12 THINK THAT WAS THE FIRST. THERE MAY HAVE BEEN A TELEVISION
11:59AM 13 SPOT OR COMMERCIAL OR SOMETHING.

11:59AM 14 AND THEN AFTER THAT THERE WAS A RECOMMENDATION ON FACEBOOK
12:00PM 15 THAT I LOOKED INTO.

12:00PM 16 Q. SO I'D LIKE TO TAKE THOSE KIND OF ONE AT A TIME.

12:00PM 17 A. SURE.

12:00PM 18 Q. FIRST YOU SAID YOU SAW A MAGAZINE AT A RELATIVE'S HOUSE
12:00PM 19 WITH SOMEONE ON THE COVER. WHO DID YOU SEE?

12:00PM 20 A. WITH ELIZABETH HOLMES ON THE COVER, YES.

12:00PM 21 Q. THANK YOU.

12:00PM 22 AND JUST FOR THE COURT REPORTER'S SAKE, IF WE CAN MAKE
12:00PM 23 SURE NOT TO TALK OVER EACH OTHER?

12:00PM 24 AND THEN YOU ALSO MENTIONED THAT YOU MIGHT HAVE SEEN SOME
12:00PM 25 ADVERTISING FOR THE COMPANY?

12:00PM 1 A. YES. I BELIEVE AT SOME POINT THERE WAS A COMMERCIAL THAT
12:00PM 2 I SAW. I'M NOT SURE WHERE.

12:00PM 3 Q. AND THEN FINALLY YOU MENTIONED SOMETHING THAT YOU SAW ON
12:00PM 4 SOCIAL MEDIA. WAS THAT THE THIRD SOURCE?

12:00PM 5 A. YES.

12:00PM 6 Q. AT THAT TIME, THAT IS, BEFORE YOU WENT TO THE COMPANY,
12:00PM 7 WHAT DID YOU KNOW ABOUT THERANOS AND ANYTHING THAT MADE IT
12:00PM 8 DIFFERENT FROM CONVENTIONAL LABS?

12:00PM 9 A. I WAS FASCINATED BY THE PROPOSED, YOU KNOW, SINGLE DROP IN
12:00PM 10 A CAPSULE IDEA OF REVOLUTIONIZING BLOOD WORK FROM ANYTHING THAT
12:00PM 11 I HAD EVER HEARD OF BEFORE.

12:00PM 12 AND I WAS ALSO VERY ADMIRABLE OF THE YOUNG CEO.

12:01PM 13 Q. TALKING ABOUT THE SMALL SAMPLE SIZE, WHY WAS THAT
12:01PM 14 APPEALING TO YOU AS SOMEONE CONSIDERING WHETHER TO GO THERE?

12:01PM 15 A. WELL, I MEAN, IT'S JUST FASCINATING, FRANKLY. AND THE --
12:01PM 16 IF WE CAN ACCOMPLISH THOSE SORTS OF THINGS WITHOUT TAKING MORE
12:01PM 17 BLOOD THAN IS ABSOLUTELY NECESSARY, THAT WAS -- THAT WAS
12:01PM 18 COMPELLING.

12:01PM 19 Q. AT SOME POINT IN 2015, DID YOU DECIDE TO HAVE A BLOOD
12:01PM 20 TEST?

12:01PM 21 A. YES.

12:01PM 22 Q. AND DID YOU DECIDE TO GO TO THERANOS FOR THAT BLOOD TEST?

12:01PM 23 A. YES.

12:01PM 24 Q. AND WHAT MADE YOU CHOOSE THERANOS AT THAT TIME?

12:01PM 25 A. AT THE TIME, TWO TOP PRIORITIES, OBVIOUSLY ACCURACY, BUT

12:01PM 1 ALSO COST OF THE TEST WAS A BIG CONCERN.

12:01PM 2 Q. LET'S TAKE THOSE IN REVERSE ORDER AND START WITH COST.

12:01PM 3 A. OKAY.

12:01PM 4 Q. AROUND THIS TIME, WERE YOU PLANNING TO PAY DIRECTLY FOR

12:01PM 5 THIS BLOOD TEST IN 2015?

12:02PM 6 A. YES, BECAUSE I WAS UNINSURED.

12:02PM 7 Q. AND IS THAT WHAT, IN FACT, ENDED UP HAPPENING? DID YOU

12:02PM 8 GET A TEST FROM THERANOS THAT YOU PAID FOR OUT OF POCKET?

12:02PM 9 A. YES.

12:02PM 10 Q. AND WHAT WAS IT ABOUT THE COST CONCERNS THAT MADE THERANOS

12:02PM 11 ATTRACTIVE TO YOU?

12:02PM 12 A. FROM EVERYTHING I HAD SEEN LOCALLY IN ARIZONA, THE

12:02PM 13 FEEDBACK WAS THAT IT WAS -- IF YOU'RE PAYING OUT OF POCKET, OR

12:02PM 14 IF MAYBE YOU'RE NOT, THAT IT WAS JUST MORE AFFORDABLE.

12:02PM 15 Q. YOU MENTIONED ACCURACY IN ADDITION TO COST IS SOMETHING

12:02PM 16 THAT WAS IMPORTANT TO YOU; IS THAT RIGHT?

12:02PM 17 A. YES. WELL, OF COURSE, YES.

12:02PM 18 Q. WHY DO YOU SAY "OF COURSE"? WHY WAS ACCURACY IMPORTANT TO

12:02PM 19 YOU IN SEEKING OUT A PLACE TO GET A BLOOD TEST?

12:02PM 20 A. I THINK IT'S FAIR, I THINK IT'S FAIR TO ASSUME MOST PEOPLE

12:02PM 21 WANTING BLOOD WORK DONE ARE HOPING FOR ACCURATE RESULTS.

12:02PM 22 Q. AND FROM YOUR PERSPECTIVE, SPECIFICALLY WAS ACCURACY THE

12:02PM 23 MOST IMPORTANT FACTOR FOR YOU IN DECIDING WHERE TO GET A BLOOD

12:02PM 24 TEST?

12:02PM 25 A. I THINK THAT'S A DIFFICULT QUESTION TO ANSWER ACTUALLY,

12:03PM 1 BECAUSE IF I HAD GONE ANYWHERE ELSE, I WOULD HAVE EXPECTED
12:03PM 2 ACCURATE RESULTS.

12:03PM 3 Q. LET ME ASK A DIFFERENT QUESTION THEN.

12:03PM 4 WE TALKED ABOUT PRICE AND THE BENEFITS OF TESTS BEING
12:03PM 5 AFFORDABLE.

12:03PM 6 FROM YOUR PERSPECTIVE AS A PATIENT, IS THERE ANY VALUE IN
12:03PM 7 BLOOD TESTS THAT ARE AFFORDABLE BUT ARE NOT SUFFICIENTLY
12:03PM 8 ACCURATE OR RELIABLE?

12:03PM 9 A. NO.

12:03PM 10 Q. DO YOU REMEMBER ANYTHING ABOUT YOUR EXPERIENCE OF GETTING
12:03PM 11 BLOOD DRAWN FROM THERANOS?

12:03PM 12 A. I REMEMBER EXPECTING A PIN PRICK AND GETTING A VENOUS
12:03PM 13 DRAW.

12:03PM 14 Q. AND DO YOU REMEMBER WHERE THAT HAPPENED?

12:03PM 15 A. I BELIEVE IT WAS IN A WALGREENS.

12:03PM 16 Q. OKAY. DO YOU REMEMBER WHETHER YOU ASKED ANYONE AT
12:03PM 17 THERANOS QUESTIONS ABOUT WHY YOU WERE HAVING THAT DRAW METHOD
12:03PM 18 INSTEAD OF WHAT YOU EXPECTED?

12:03PM 19 A. I DON'T REMEMBER. I THINK I DIDN'T ASK ANY QUESTIONS. I
12:03PM 20 JUST SORT OF WENT WITH IT.

12:04PM 21 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

12:04PM 22 THE COURT: YES.

12:04PM 23 MR. BOSTIC: (HANDING.)

12:04PM 24 Q. MS. TOMPKINS, I'VE JUST HANDED YOU A BINDER WITH A COUPLE
12:04PM 25 OF DOCUMENTS IN IT.

12:04PM 1 THE DEFENSE HAS A COPY, AND I BELIEVE THE COURT HAS ONE
12:04PM 2 ALSO.

12:04PM 3 THE COURT: YES.

12:04PM 4 BY MR. BOSTIC:

12:04PM 5 Q. MS. TOMPKINS, IF I COULD ASK YOU TO TURN TO TAB 5483 IN
12:04PM 6 THE BINDER IN FRONT OF YOU.

12:04PM 7 A. UH-HUH.

12:04PM 8 Q. AND DO YOU RECOGNIZE WHAT IS AT 5483?

12:04PM 9 A. UH-HUH.

12:04PM 10 Q. IS THIS --

12:04PM 11 THE COURT: IS THAT YES?

12:04PM 12 THE WITNESS: YES. YES, IT IS.

12:04PM 13 BY MR. BOSTIC:

12:04PM 14 Q. THANK YOU, MS. TOMPKINS.

12:04PM 15 AND IS THIS A LAB REPORT FROM THERANOS TO YOU FROM MAY OF
12:04PM 16 2015?

12:04PM 17 A. YES. IT WAS SENT TO MY GENERAL PRACTITIONER, BUT IT IS
12:04PM 18 FOR ME.

12:04PM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5483.

12:04PM 20 I'LL NOTE THAT EXTRANEOUS LAB RESULTS HAVE BEEN REDACTED
12:04PM 21 IN THE COPY THAT WE'RE OFFERING.

12:05PM 22 MR. COOPERSMITH: NO OBJECTION TO THIS EXHIBIT,
12:05PM 23 YOUR HONOR.

12:05PM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:05PM 25 (GOVERNMENT'S EXHIBIT 5483 WAS RECEIVED IN EVIDENCE.)

12:05PM 1 BY MR. BOSTIC:

12:05PM 2 Q. SO IF WE CAN ZOOM IN FIRST ON THE TOP OF THE PAGE.

12:05PM 3 SO, MS. TOMPKINS, DO YOU SEE YOUR NAME APPEARING AT THE

12:05PM 4 TOP THERE?

12:05PM 5 A. YES.

12:05PM 6 Q. AND OVER TO THE RIGHT, YOU SEE UNDER PHYSICIAN THERE'S A

12:05PM 7 NAME, GERALD ASIN.

12:05PM 8 DO YOU SEE THAT?

12:05PM 9 A. YES.

12:05PM 10 Q. AND DO YOU RECOGNIZE THAT NAME?

12:05PM 11 A. YES.

12:05PM 12 Q. WHO WAS DR. ASIN?

12:05PM 13 A. HE WAS MY GENERAL PRACTITIONER DOCTOR AT THE TIME.

12:05PM 14 Q. AND WAS THIS TEST IN MAY OF 2015 ORDERED THROUGH HIM?

12:05PM 15 A. YES, IT WAS.

12:05PM 16 Q. AND YOU MENTIONED THAT THE RESULTS WERE SENT BACK TO HIM;

12:05PM 17 IS THAT CORRECT?

12:05PM 18 A. CORRECT.

12:05PM 19 Q. AT THE TOP OF THIS PAGE, DO YOU SEE THAT THERE'S A FAX

12:05PM 20 STAMP, OR A FAX STAMP LEGEND ACROSS THE TOP?

12:05PM 21 A. YES.

12:05PM 22 Q. WITH A DATE?

12:05PM 23 A. YES, I DO.

12:05PM 24 Q. SORRY. WITH THE DATE INDICATING THAT IT WAS SENT ON

12:06PM 25 MAY 11TH, 2015?

12:06PM 1 A. YES, I DO.

12:06PM 2 Q. AND DO YOU SEE NEXT TO THAT IS WRITTEN THERANOS FAX

12:06PM 3 SERVER?

12:06PM 4 A. YES.

12:06PM 5 Q. AND DO YOU SEE A LITTLE FURTHER DOWN ON THE RIGHT-HAND

12:06PM 6 SIDE OF THE PAGE THERE'S SOME CONTACT INFORMATION FOR THERANOS

12:06PM 7 LISTING A FAX NUMBER?

12:06PM 8 A. YES, I DO.

12:06PM 9 Q. AND DO YOU SEE THAT THAT FAX NUMBER BEGINS WITH A 650 AREA

12:06PM 10 CODE?

12:06PM 11 A. YES, I DO.

12:06PM 12 Q. LET'S GO DOWN AND LOOK AT THE RESULTS THEMSELVES, AND

12:06PM 13 SPECIFICALLY AT A SECTION THAT IS LABELLED SUMMARY OF ABNORMAL

12:06PM 14 RESULTS.

12:06PM 15 DO YOU SEE THAT?

12:06PM 16 A. I DO, YES.

12:06PM 17 Q. AND LISTED THERE AT THE VERY TOP IS A TEST NAME LABELED

12:06PM 18 HIV-1 PLUS 2 AB.

12:06PM 19 DO YOU SEE THAT?

12:06PM 20 A. YES.

12:06PM 21 Q. AND THE RESULT FOR THAT TEST IS LISTED AS REACTIVE.

12:06PM 22 DO YOU SEE THAT?

12:06PM 23 A. YES, I DO.

12:06PM 24 Q. AND THAT RESULT IS FLAGGED BECAUSE OF THE REACTIVE RETURN.

12:06PM 25 DO YOU SEE THAT?

12:06PM 1 A. YES.

12:06PM 2 Q. DO YOU REMEMBER RECEIVING THIS RESULT IN MAY OF 2015?

12:07PM 3 A. YES.

12:07PM 4 Q. AND WHAT WAS YOUR REACTION TO SEEING THIS REACTIVE RESULT

12:07PM 5 AT THAT TIME? DID IT SURPRISE YOU?

12:07PM 6 A. IT SURPRISED AND TERRIFIED ME.

12:07PM 7 Q. BASED ON YOUR MEDICAL HISTORY UP UNTIL THAT POINT -- LET

12:07PM 8 ME ASK, HAD YOU EVER BEEN DIAGNOSED WITH HIV OR AIDS?

12:07PM 9 A. NO.

12:07PM 10 Q. HAVE YOU EVER BEEN DIAGNOSED WITH HIV OR AIDS?

12:07PM 11 A. NO.

12:07PM 12 Q. HAVE YOU EVER EXPERIENCED ANY SYMPTOMS ATTRIBUTED TO HIV

12:07PM 13 OR AIDS?

12:07PM 14 A. NO.

12:07PM 15 Q. HAVE YOU EVER RECEIVED TREATMENT FOR HIV OR AIDS?

12:07PM 16 A. NO.

12:07PM 17 Q. LET'S LOOK AT A LITTLE FURTHER DOWN, IT MIGHT BE ON THE

12:07PM 18 NEXT PAGE OF THIS EXHIBIT, AND IN THE MIDDLE OF THE PAGE YOU

12:07PM 19 SEE THERE'S A BREAKDOWN FOR A SERIES OF HIV TESTS THAT WERE RUN

12:07PM 20 ON YOUR SAMPLE?

12:07PM 21 A. YES, I SEE THAT.

12:08PM 22 Q. AND DO YOU SEE THAT THE TEST FOR HIV-1 PLUS 2 ANTIBODIES

12:08PM 23 HAS THAT REACTIVE LABEL NEXT TO IT?

12:08PM 24 A. YES, I SEE THAT.

12:08PM 25 Q. DO YOU SEE THAT THE OTHER TESTS FOR HIV-1 ANTIBODIES,

12:08PM 1 HIV-2 ANTIBODIES, AND HIV-1 RNA ARE ALL LISTED AS NON-REACTIVE

12:08PM 2 OR NOT DETECTED?

12:08PM 3 A. YES, I SEE THAT.

12:08PM 4 Q. THEN LET'S GO DOWN TO THE BOTTOM UNDER NOTES, THIS MIGHT

12:08PM 5 BE ON THE FOLLOWING PAGE, AND THERE'S A BOX UNDER HIV-1 RNA,

12:08PM 6 AND THEN UNDER THAT BOX DO YOU SEE THERE'S A SECTION CALLED LAB

12:08PM 7 NOTES?

12:08PM 8 A. YES.

12:08PM 9 Q. AND IT READS THERE, "HIV ANTIBODIES WERE NOT CONFIRMED AND

12:08PM 10 HIV-1 RNA WAS NOT DETECTED. NO LABORATORY EVIDENCE OF HIV-1

12:08PM 11 INFECTION. FOLLOW-UP TESTING FOR HIV-2 SHOULD BE PERFORMED IF

12:08PM 12 CLINICALLY INDICATED."

12:08PM 13 DO YOU SEE THAT?

12:09PM 14 A. YES, I DO.

12:09PM 15 Q. LET'S GO BACK TO THE FIRST PAGE, AND GO BACK TO THAT

12:09PM 16 REACTIVE RESULT FOR HIV-1 PLUS 2 ANTIBODIES?

12:09PM 17 A. YES.

12:09PM 18 Q. OKAY. DO YOU SEE THAT ON THE SCREEN IN FRONT OF YOU?

12:09PM 19 A. YES, I DO.

12:09PM 20 Q. BASED ON YOUR KNOWLEDGE OF YOUR MEDICAL HISTORY, ARE YOU

12:09PM 21 AWARE OF ANY REASON WHY HIV ANTIBODIES WOULD BE PRESENT IN YOUR

12:09PM 22 BLOOD, OR WOULD HAVE BEEN IN MAY OF 2015?

12:09PM 23 A. NO, I AM NOT. AND I KNOW THAT PROBABLY SEEMS LIKE A

12:09PM 24 STRANGE RESPONSE, BUT I AM NOT. I HAVE NO REASON TO THINK THAT

12:09PM 25 THEY WOULD BE IN MY BLOODSTREAM.

12:09PM 1 Q. FOLLOWING THE RECEIPT OF THIS RESULT, WHAT ACTION DID YOU
12:09PM 2 TAKE, IF ANY?

12:09PM 3 A. I FOLLOWED UP WITH -- WELL, I SPOKE TO MY DOCTOR FOR
12:09PM 4 AWHILE, AND THEN I FOLLOWED UP WITH THERANOS DIRECTLY, AND --
12:09PM 5 UH-HUH.

12:09PM 6 Q. I'M SORRY. YOU CAN FINISH YOUR ANSWER. I DIDN'T MEAN TO
12:09PM 7 TALK OVER YOU.

12:09PM 8 A. I DIDN'T MEAN TO TALK OVER YOU EITHER.

12:10PM 9 AND I SPOKE TO A CUSTOMER SERVICE AGENT TRYING TO GET SOME
12:10PM 10 MORE INFORMATION.

12:10PM 11 Q. THAT CALL TO THERANOS, WHY DID YOU DECIDE TO MAKE THAT
12:10PM 12 CALL?

12:10PM 13 A. BECAUSE I WAS CONFUSED AND FRIGHTENED AND WANTED TO SEE IF
12:10PM 14 THERE WAS SOME INFORMATION I COULD GET THAT WOULD EXPLAIN WHY
12:10PM 15 THIS INFORMATION WAS GIVEN TO ME, WHY THESE -- LIKE, HOW COULD
12:10PM 16 THIS CONSULT BE POSSIBLE?

12:10PM 17 Q. AND DURING THAT CALL WITH THERANOS, DO YOU RECALL SPEAKING
12:10PM 18 TO A MEDICAL PROFESSIONAL AT ANY POINT?

12:10PM 19 A. INITIALLY I HAD NO MEMORY OF SPEAKING TO ANYONE BESIDES
12:10PM 20 THE CUSTOMER SERVICE AGENT.

12:10PM 21 IN THE TRIAL WITH MS. HOLMES, HOWEVER, I WAS PRESENTED
12:10PM 22 WITH AN EXCHANGE OF --

12:10PM 23 MR. COOPERSMITH: YOUR HONOR, OBJECTION. IF WE
12:10PM 24 COULD JUST LIMIT THIS ANSWER.

12:10PM 25 THE COURT: WHY DON'T YOU ASK ANOTHER QUESTION?

12:10PM 1 MR. BOSTIC: SURE.

12:10PM 2 THE WITNESS: OKAY.

12:10PM 3 BY MR. BOSTIC:

12:10PM 4 Q. SO, MS. TOMPKINS, IF I COULD JUST ASK YOU TO TESTIFY BASED
12:11PM 5 ON YOUR MEMORY SITTING HERE TODAY --

12:11PM 6 A. RIGHT.

12:11PM 7 Q. -- DO YOU HAVE A RECOLLECTION OF SPEAKING TO A MEDICAL
12:11PM 8 PROFESSIONAL AT THERANOS? AND I'M NOT ASKING HOW YOU LEARNED
12:11PM 9 OR HOW YOU WERE REFRESHED.

12:11PM 10 A. RIGHT. I HAVE A RECOLLECTION OF SPEAKING TO A SECOND
12:11PM 11 PERSON. I DO NOT KNOW THAT THAT SECOND PERSON WAS A MEDICAL
12:11PM 12 PROFESSIONAL.

12:11PM 13 Q. LET ME ASK A MORE GENERAL QUESTION.

12:11PM 14 IN THE CONVERSATIONS THAT YOU HAD WITH EITHER OF THE, IT
12:11PM 15 SOUNDS LIKE, TWO PEOPLE THAT YOU SPOKE TO AT THERANOS --

12:11PM 16 A. UH-HUH.

12:11PM 17 Q. -- DURING THOSE CONVERSATIONS, DID YOU RECEIVE AN
12:11PM 18 EXPLANATION FOR OR A CORRECTION FOR YOUR LAB RESULTS THAT YOU
12:11PM 19 FOUND SATISFYING?

12:11PM 20 A. NO.

12:11PM 21 Q. WHAT DO YOU REMEMBER ABOUT THOSE CONVERSATIONS?

12:11PM 22 A. I WAS VERY EMOTIONAL AT THE TIME, AND I REMEMBER WHEN I
12:11PM 23 HAD THE FIRST CONVERSATION WITH THE CUSTOMER SERVICE AGENT
12:12PM 24 ASKING HER, ASKING HER THINGS THAT SHOULD HAVE BEEN ASKED OF A
12:12PM 25 MEDICAL PROFESSIONAL, AND HER SAYING, MA'AM, I'M JUST A

12:12PM 1 CUSTOMER SERVICE AGENT, LET ME REMIND YOU OF THAT. LIKE, THESE
12:12PM 2 ARE NOT THINGS THAT I CAN ANSWER FOR YOU, WHICH I UNDERSTAND.

12:12PM 3 BUT THE LITTLE I REMEMBER ABOUT THE SECOND PERSON WAS THAT
12:12PM 4 THERE WAS MENTION OF THE ALGORITHM AT SOME POINT, BUT IT DIDN'T
12:12PM 5 MAKE MUCH SENSE TO ME. IT DIDN'T ANSWER MY QUESTIONS, IF THAT
12:12PM 6 MAKES SENSE.

12:12PM 7 Q. AFTER YOU GOT THESE RESULTS BACK AND SPOKE TO THERANOS,
12:12PM 8 DID YOU TAKE ANY ADDITIONAL ACTIONS TO TRY TO CONFIRM THAT TEST
12:12PM 9 RESULT?

12:12PM 10 A. WITH THERANOS?

12:12PM 11 Q. OR WITH ANOTHER --

12:12PM 12 A. FOLLOWUP? YES, I WAS ABLE TO GET AN EXAMINATION ABOUT
12:12PM 13 THREE MONTHS LATER AT A WOMEN'S CLINIC.

12:12PM 14 Q. AND DID THAT EXAMINATION INCLUDE A TEST FOR HIV?

12:13PM 15 A. YES.

12:13PM 16 Q. AND DO YOU RECALL WHAT THE RESULT WAS?

12:13PM 17 A. NEGATIVE.

12:13PM 18 Q. AND DO YOU TODAY STILL HAVE A COPY OF THOSE RESULTS?

12:13PM 19 A. NO. I WAS NOT ABLE TO TRACK THOSE DOWN.

12:13PM 20 Q. I'LL ASK YOU TO TURN TO TAB 5484 IN YOUR BINDER, PLEASE.

12:13PM 21 A. OKAY.

12:13PM 22 Q. AND AT 5484, DO YOU SEE A LAB REPORT FOR A TEST THAT YOU
12:13PM 23 HAD DONE AROUND AUGUST 10TH OF 2021?

12:13PM 24 A. YES.

12:13PM 25 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5484.

12:13PM 1 MR. COOPERSMITH: NOTHING BEYOND WHAT WAS PREVIOUSLY
12:13PM 2 DISCUSSED BEFORE, YOUR HONOR.
12:13PM 3 THE COURT: ALL RIGHT. THANK YOU.
12:13PM 4 THIS IS ADMITTED AND MAY BE PUBLISHED.
12:13PM 5 (GOVERNMENT'S EXHIBIT 5484 WAS RECEIVED IN EVIDENCE.)
12:13PM 6 BY MR. BOSTIC:
12:13PM 7 Q. SO, MS. TOMPKINS, DO YOU SEE THAT IT INDICATES AT THE TOP
12:13PM 8 THIS IS FROM CONTRA COSTA HEALTH SERVICES?
12:13PM 9 A. YES.
12:13PM 10 Q. WERE YOU RESIDING OR STAYING IN THE CONTRA COSTA AREA IN
12:14PM 11 AUGUST OF 2021?
12:14PM 12 A. YES, I WAS.
12:14PM 13 Q. AND DO YOU SEE YOUR NAME THERE AT THE TOP?
12:14PM 14 A. YES.
12:14PM 15 Q. AND THIS IS LABELED "HUMAN IMMUNODEFICIENCY VIRUS (HIV)
12:14PM 16 ANTIGEN/ANTIBODY TEST RESULTS."
12:14PM 17 DO YOU SEE THAT?
12:14PM 18 A. YES.
12:14PM 19 Q. AND LET'S LOOK AT THE RESULTS. LET'S GO DOWN A LITTLE
12:14PM 20 BIT.
12:14PM 21 DO YOU SEE FROM YOUR TEST IN AUGUST OF 2021, THE RESULT
12:14PM 22 REPORTED BACK WAS NEGATIVE.
12:14PM 23 DO YOU SEE THAT?
12:14PM 24 A. YES, I DO.
12:14PM 25 Q. I TAKE IT YOU WERE NOT SURPRISED BY THIS RESULT?

12:14PM 1 A. NO, I WAS NOT.

12:14PM 2 Q. NEXT TO THAT NEGATIVE CHECK IT READS, "EVIDENCE OF HIV

12:14PM 3 ANTIGEN OR ANTIBODY WERE NOT DETECTED."

12:14PM 4 DO YOU SEE THAT?

12:14PM 5 A. YES.

12:14PM 6 Q. FOLLOWING YOUR EXPERIENCE WITH THERANOS, DID YOU CONTINUE

12:14PM 7 TO USE THAT LAB FOR TESTING AT ANY POINT?

12:14PM 8 A. THERANOS?

12:14PM 9 Q. YES.

12:14PM 10 A. NO.

12:15PM 11 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

12:15PM 12 THE COURT: YES.

12:15PM 13 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

12:15PM 14 MR. BOSTIC: NOTHING FURTHER. THANK YOU.

12:15PM 15 THE COURT: CROSS-EXAMINATION?

12:15PM 16 **CROSS-EXAMINATION**

12:15PM 17 BY MR. COOPERSMITH:

12:15PM 18 Q. GOOD AFTERNOON, MS. TOMPKINS.

12:15PM 19 A. GOOD AFTERNOON, SIR.

12:15PM 20 Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI

12:15PM 21 IN THIS CASE.

12:15PM 22 I'M GOING TO ASK YOU SOME QUESTIONS TO FOLLOW UP ON SOME

12:15PM 23 THINGS THAT MR. BOSTIC ASKED YOU ABOUT. OKAY?

12:15PM 24 A. UH-HUH, YES.

12:15PM 25 Q. THANK YOU.

12:16PM 1 SO JUST TO MAKE SURE I UNDERSTAND, YOU HAD A BLOOD TEST
12:16PM 2 WITH THERANOS IN MAY OF 2015?

12:16PM 3 A. CORRECT.

12:16PM 4 Q. AND YOU GOT THAT THROUGH YOUR DOCTOR, WHICH WAS
12:16PM 5 DR. GERALD ASIN?

12:16PM 6 A. CORRECT.

12:16PM 7 Q. OKAY. AND BEFORE THAT, YOU HAD NOT USED THERANOS BEFORE?

12:16PM 8 A. NO, I HAD NOT.

12:16PM 9 Q. AND THE BLOOD TEST THAT YOU ACTUALLY GOT, DID YOU GET THAT
12:16PM 10 AT A WALGREENS STORE?

12:16PM 11 A. YES.

12:16PM 12 Q. AND IT WAS A DRAW FROM YOUR VEIN IN YOUR ARM; IS THAT
12:16PM 13 RIGHT?

12:16PM 14 A. CORRECT.

12:16PM 15 Q. OKAY. AND WHOSE IDEA WAS IT TO GET THE HIV TEST, YOU OR
12:16PM 16 DR. ASIN?

12:16PM 17 A. OH, ME.

12:16PM 18 Q. OKAY. MS. TOMPKINS, LET'S JUST GO TO YOUR TEST RESULT FOR
12:16PM 19 A MINUTE.

12:16PM 20 SO THE GOVERNMENT SHOWED YOU EXHIBIT 5483. AND IF YOU
12:17PM 21 COULD TURN TO THAT. IT WILL ALSO BE ON THE SCREEN. WHATEVER
12:17PM 22 YOUR PREFERENCE IS.

12:17PM 23 AND IF WE COULD LOOK AT PAGE 2 FOR STARTERS.

12:17PM 24 DO YOU SEE THAT SECTION THAT YOU REVIEWED WITH MR. BOSTIC
12:17PM 25 WHERE IT HAS THE FOUR RESULTS STARTING WITH HIV-1 PLUS 2 AB,

12:17PM 1 AND THEN CONTINUING WITH THE LAST ONE, HIV-1 RNA.

12:17PM 2 DO YOU SEE THAT?

12:17PM 3 A. YES, I SEE THAT.

12:17PM 4 Q. AND JUST SO WE UNDERSTAND IT, THESE RESULTS WERE ALL FROM
12:17PM 5 THAT ONE SINGLE VENOUS DRAW BLOOD TEST YOU HAD AT THE WALGREENS
12:17PM 6 STORE; RIGHT?

12:17PM 7 A. YES, THEY WERE NOT MULTIPLE DRAWS THAT I RECALL.

12:17PM 8 Q. RIGHT.

12:17PM 9 A. UH-HUH.

12:17PM 10 Q. THANK YOU. IN OTHER WORDS, YOU DID NOT GO TO THERANOS
12:17PM 11 FOUR DIFFERENT TIMES TO GET THESE FOUR?

12:17PM 12 A. NO, NO.

12:17PM 13 Q. SO YOU GOT THESE RESULTS ALL AT ONCE; RIGHT?

12:17PM 14 A. YES.

12:17PM 15 Q. OKAY. AND THE ONE THAT -- AND THEY WERE SENT TO YOUR
12:17PM 16 DOCTOR'S OFFICE; RIGHT?

12:17PM 17 A. CORRECT.

12:17PM 18 Q. AND THEN THE DOCTOR IN TURN REVIEWED THE RESULTS WITH YOU?

12:18PM 19 A. YES.

12:18PM 20 Q. OKAY. SO YOU HAD THE DOCTOR TO TALK TO TO ASK ANY
12:18PM 21 QUESTIONS THAT YOU MIGHT WANT TO ASK; RIGHT?

12:18PM 22 A. I MEAN, SORT OF. I'M NOT QUITE SURE WHAT YOU MEAN BY

12:18PM 23 THAT. I -- YES, HE'S A MEDICAL PROFESSIONAL, AND WE WERE BOTH
12:18PM 24 SURPRISED BY THE RESULTS.

12:18PM 25 Q. RIGHT. AND YOU HAD A CONVERSATION WITH HIM ABOUT THIS?

12:18PM 1

A. YES.

12:18PM 2

Q. OKAY. AND IF YOU GO TO THE PAGE 3 OF THE DOCUMENT, YOU

12:18PM 3

SEE THERE'S A SENTENCE THERE, AND I WON'T READ THE WHOLE THING

12:18PM 4

OVER, OF COURSE MR. BOSTIC DID THAT, BUT THERE'S ONE SENTENCE

12:18PM 5

THAT SAYS NO LABORATORY EVIDENCE OF HIV-1 INFECTION.

12:18PM 6

DO YOU SEE THAT?

12:18PM 7

A. YES, I DO.

12:18PM 8

Q. SO THAT MEANS THAT GOOD, YOU DIDN'T HAVE HIV; RIGHT?

12:18PM 9

MR. BOSTIC: OBJECTION. FOUNDATION.

12:18PM 10

THE COURT: SUSTAINED.

12:19PM 11

BY MR. COOPERSMITH:

12:19PM 12

Q. WELL, IS THAT WHAT YOU UNDERSTOOD THAT YOUR LAB NOTES

12:19PM 13

SAID, NO EVIDENCE OF HIV-1 INFECTION?

12:19PM 14

A. AT THE TIME, NO, I DON'T THINK I DID UNDERSTAND THAT

12:19PM 15

BECAUSE THE RESULTS SHOWED REACTIVE.

12:19PM 16

Q. BUT YOU SEE THE LAB NOTE; RIGHT?

12:19PM 17

A. I SEE THE LAB NOTE HERE, YES.

12:19PM 18

Q. OKAY. I WANT TO SHOW YOU A DIFFERENT EXHIBIT SO WE CAN

12:19PM 19

TRY TO UNDERSTAND THIS, AND IT'S EXHIBIT 206 -- I'M SORRY --

12:19PM 20

20683. I'M GOING TO HAVE TO HAND YOU A BINDER BECAUSE IT'S NOT

12:19PM 21

IN THE ONE YOU HAVE.

12:19PM 22

A. OH, OKAY.

12:19PM 23

MR. COOPERSMITH: MAY I APPROACH, YOUR HONOR?

12:19PM 24

THE COURT: YES.

12:19PM 25

MR. COOPERSMITH: (HANDING.)

12:20PM 1 THE COURT: WOULD YOU STATE THE NUMBER AGAIN,
12:20PM 2 PLEASE.
12:20PM 3 MR. COOPERSMITH: YES, YOUR HONOR.
12:20PM 4 IT'S 20683. 20683.
12:20PM 5 YOUR HONOR, PURSUANT TO OUR DISCUSSION, WE ARE OFFERING
12:20PM 6 THE ADMISSION OF PAGES 1 AND 9 OF THE DOCUMENT.
12:20PM 7 AND I BELIEVE WITHOUT OBJECTION IN THAT REGARD.
12:20PM 8 MR. BOSTIC: NO OBJECTION, YOUR HONOR.
12:20PM 9 THE COURT: ALL RIGHT. THOSE PAGES ARE ADMITTED,
12:21PM 10 AND THEY MAY BE PUBLISHED.
12:21PM 11 (DEFENDANT'S EXHIBIT 20683, PAGES 1 AND 9, WAS RECEIVED IN
12:21PM 12 EVIDENCE.)
12:21PM 13 BY MR. COOPERSMITH:
12:21PM 14 Q. OKAY. LET'S START WITH PAGE 1.
12:21PM 15 DO YOU SEE ON PAGE 1 THIS DOCUMENT IS CALLED LABORATORY
12:21PM 16 TESTING FOR THE DIAGNOSIS OF HIV INFECTION; RIGHT?
12:21PM 17 A. YES.
12:21PM 18 Q. AND THEN AT THE VERY BOTTOM, IF WE JUST BLOW THAT UP, YOU
12:21PM 19 SEE THIS IS SOMETHING THAT IS PUBLISHED BY THE CENTERS FOR
12:21PM 20 DISEASE CONTROL AND PREVENTION.
12:21PM 21 DO YOU SEE THAT?
12:21PM 22 A. YES, I DO.
12:21PM 23 Q. AND DO YOU UNDERSTAND THAT THAT IS A FEDERAL AGENCY THAT
12:21PM 24 WORKS ON INFECTIOUS DISEASE IN THE UNITED STATES?
12:21PM 25 A. YES, I DO.

12:21PM 1 Q. OKAY. LET'S TURN TO PAGE 9.

12:21PM 2 DO YOU SEE THERE THAT THERE'S A DIAGRAM?

12:21PM 3 A. YES, I SEE IT.

12:21PM 4 Q. AND THEN THE DIAGRAM IS HEADED "RECOMMENDED LABORATORY HIV

12:21PM 5 TESTING ALGORITHM FOR SERUM OR PLASMA SPECIMENS"?

12:21PM 6 A. YES, I SEE THAT.

12:21PM 7 Q. OKAY. SO IN THE CDC DIAGRAM, YOU SEE AT THE TOP IT STARTS

12:22PM 8 OUT WITH "HIV-1/2 ANTIGEN/ANTIBODY COMBINATION IMMUNOASSAY."

12:22PM 9 DO YOU SEE THAT?

12:22PM 10 A. YES.

12:22PM 11 Q. OKAY. AND MR. TIEDEMANN, CAN YOU PUT ON THE SCREEN THE

12:22PM 12 PREVIOUS EXHIBIT WE WERE LOOKING AT, WHICH IS 5483, AND IN

12:22PM 13 PARTICULAR PAGE 2.

12:22PM 14 AND THEN IF WE CAN BLOW UP THE RESULTS FOR THOSE FOUR

12:22PM 15 RESULTS IN THE MIDDLE.

12:22PM 16 THANK YOU. ALL RIGHT.

12:22PM 17 SO COMPARING THE TWO DOCUMENTS, DO YOU SEE THAT "HIV-1/2

12:22PM 18 ANTIGEN/ANTIBODY COMBINATION IMMUNOASSAY," YOU SEE THAT ON THE

12:22PM 19 LEFT-HAND SIDE?

12:22PM 20 A. YES.

12:22PM 21 Q. AND THEN THAT'S FROM THE CENTERS FOR DISEASE CONTROL

12:22PM 22 PUBLICATION; RIGHT?

12:23PM 23 AND THEN ON THE RIGHT-HAND SIDE IS YOUR TEST RESULT AND IT

12:23PM 24 SAYS HIV-1 PLUS 2 AB.

12:23PM 25 DO YOU SEE THAT?

12:23PM 1 A. YES, I DO SEE THAT.

12:23PM 2 Q. OKAY. AND THAT'S THE ONE THAT SAID REACTIVE; RIGHT?

12:23PM 3 A. CORRECT.

12:23PM 4 Q. OKAY. AND THEN IF YOU GO BACK TO THE LEFT-HAND SIDE, THE

12:23PM 5 CDC PUBLICATION, DO YOU SEE THAT IT SAYS THERE'S TWO CHOICES,

12:23PM 6 EITHER PLUS OR MINUS.

12:23PM 7 DO YOU SEE THAT?

12:23PM 8 A. YES.

12:23PM 9 Q. AND IF IT'S MINUS, THEN IT SAYS BELOW THAT, NEGATIVE FOR

12:23PM 10 HIV-1 AND HIV-2 ANTIBODIES AND P24 AB.

12:23PM 11 DO YOU SEE THAT?

12:23PM 12 A. YES.

12:23PM 13 Q. AND THEN ON THE LEFT SIDE OF THE PLUS OR MINUS, IT ALSO

12:23PM 14 HAS A PLUS OPTION.

12:23PM 15 DO YOU SEE THAT?

12:23PM 16 A. YES, I SEE THAT.

12:23PM 17 Q. AND THEN IF YOU GO DOWN BELOW THE PLUS OPTION, THERE ARE

12:24PM 18 OTHER THINGS THAT WOULD HAVE TO BE DONE IN THAT EVENT; RIGHT?

12:24PM 19 A. UH-HUH.

12:24PM 20 Q. AND THEN THE NEXT THING THAT HAPPENS ON THE CDC FLOW CHART

12:24PM 21 IS "HIV-1/HIV-2 ANTIBODY DIFFERENTIATION IMMUNOASSAY."

12:24PM 22 DO YOU SEE THAT?

12:24PM 23 A. YES, I DO.

12:24PM 24 Q. OKAY. AND THEN IF YOU GO TO YOUR PATIENT RESULTS ON THE

12:24PM 25 RIGHT SIDE, YOU SEE THERE ARE TWO ADDITIONAL TESTS THAT ARE THE

12:24PM 1 SECOND AND THIRD TESTS, HIV-1 AB.

12:24PM 2 DO YOU SEE THAT?

12:24PM 3 A. YES.

12:24PM 4 Q. AND THEN SEPARATELY HIV-2 AB.

12:24PM 5 DO YOU SEE THAT?

12:24PM 6 A. YES, I DO.

12:24PM 7 Q. AND THE RESULT FOR BOTH OF THOSE IS NONREACTIVE?

12:24PM 8 A. THAT'S CORRECT.

12:24PM 9 Q. OKAY. LET'S GO BACK TO THE OTHER SIDE CDC PUBLICATION,

12:24PM 10 AND YOU SEE WHAT THE CDC PROTOCOL IS FOR VARIOUS SCENARIOS

12:24PM 11 DEPENDING ON WHAT HAPPENS WITH THE HIV-1 AND THE HIV-2 TESTS.

12:24PM 12 SO THE FIRST EXAMPLE ON THE LEFT SIDE IS HIV-1 IS POSITIVE

12:25PM 13 AND HIV-2 IS NEGATIVE; RIGHT?

12:25PM 14 A. YES, I SEE THAT.

12:25PM 15 Q. AND THEN GOING TO THE RIGHT, IT SAYS HIV-1 IS NEGATIVE AND

12:25PM 16 HIV-2 IS POSITIVE.

12:25PM 17 DO YOU SEE THAT?

12:25PM 18 A. YES, I SEE THAT.

12:25PM 19 Q. AND ANOTHER SCENARIO IS BOTH WOULD BE POSITIVE; RIGHT?

12:25PM 20 A. CORRECT.

12:25PM 21 Q. RIGHT. AND THEN THE FOURTH SCENARIO ON THE LINE THAT

12:25PM 22 WE'RE LOOKING AT IS HIV-1 IS NEGATIVE OR INDETERMINATE AND

12:25PM 23 HIV-2 IS NEGATIVE.

12:25PM 24 DO YOU SEE THAT?

12:25PM 25 A. YES.

12:25PM 1 Q. AND IF WE GO TO YOUR PATIENT RESULTS, BOTH OF YOUR HIV-1
12:25PM 2 AND HIV-2 AB RESULTS WERE NONREACTIVE; RIGHT?
12:25PM 3 A. CORRECT.
12:25PM 4 Q. AND THEN IF WE GO BACK TO THE LEFT-HAND SIDE, THE CDC
12:26PM 5 PROTOCOL, YOU SEE BELOW THE BOTH NEGATIVE LINE THAT WE WERE
12:26PM 6 JUST LOOKING AT THAT THERE'S ANOTHER STEP, WHICH IS THE HIV-1
12:26PM 7 NAT.
12:26PM 8 DO YOU SEE THAT?
12:26PM 9 A. YES, AND I DON'T KNOW WHAT THAT IS BECAUSE IT'S NOWHERE --
12:26PM 10 Q. RIGHT. SO IF WE GO TO THE LEFT-HAND SIDE OF THE SAME BOX,
12:26PM 11 AT THE VERY BOTTOM DO YOU SEE THERE'S A NOTATION THAT SAYS NAT?
12:26PM 12 A. OH, GOT IT.
12:26PM 13 Q. AND WHAT DOES IT SAY AFTER THAT?
12:26PM 14 A. NUCLEIC ACID TEST, AND SO OF COURSE THAT'S WHAT NAT IS.
12:26PM 15 Q. RIGHT.
12:26PM 16 A. SORRY. IT TOOK ME A MOMENT.
12:26PM 17 Q. NO PROBLEM.
12:26PM 18 AND THEN AFTER THAT TEST, IF WE GO TO THE RIGHT-HAND SIDE,
12:26PM 19 HIV-1 NAT -- I'M SORRY, ON THE CDC CHART -- WELL, OKAY, LET'S
12:26PM 20 GO TO YOUR PATIENT RESULT.
12:26PM 21 DO YOU SEE THERE'S AN HIV-1 RNA RESULT?
12:26PM 22 A. YES, I DO.
12:26PM 23 Q. AND THAT'S NOT DETECTED; RIGHT?
12:26PM 24 A. CORRECT.
12:26PM 25 Q. AND YOU UNDERSTAND THAT'S A -- I THINK YOU SAID YOU

12:27PM 1 UNDERSTOOD WHAT RNA WAS?

12:27PM 2 A. YES, I UNDERSTAND WHAT RNA IS.

12:27PM 3 Q. YES. AND THAT'S BASICALLY LIKE A PCR TEST.

12:27PM 4 ARE YOU FAMILIAR WITH THAT TERM?

12:27PM 5 A. PCR? NO, I DON'T BELIEVE SO.

12:27PM 6 Q. OKAY. ARE YOU FAMILIAR WITH COVID PROTOCOLS THAT WE'VE

12:27PM 7 ALL BEEN UNFORTUNATELY GOING THROUGH?

12:27PM 8 A. YES.

12:27PM 9 Q. AND ARE YOU FAMILIAR WITH THE FAST RAPID TEST?

12:27PM 10 A. YES, I AM.

12:27PM 11 Q. AND ARE YOU FAMILIAR WITH THE CONFIRMATORY TEST THAT YOU

12:27PM 12 CAN DO AND WAIT A DAY OR SO FOR?

12:27PM 13 A. YES, YES.

12:27PM 14 Q. AND DO YOU UNDERSTAND THAT THAT CONFIRMATORY TEST IS A PCR

12:27PM 15 OR NUCLEIC ACID TEST?

12:27PM 16 A. NO.

12:27PM 17 Q. YOU DON'T KNOW THAT?

12:27PM 18 A. NO, I DON'T KNOW THAT.

12:27PM 19 Q. OKAY. THAT'S FINE.

12:27PM 20 ANYWAY, YOU SEE THAT, GOING TO THE LEFT-HAND SIDE, THE CDC

12:27PM 21 PROTOCOL, THEN IT HAS AFTER THE HIV-1 NUCLEIC ACID TEST, NAT,

12:27PM 22 THEN IT HAS TWO CHOICES, RIGHT, HIV-1 NAT POSITIVE, OR HIV-1

12:28PM 23 NAT NEGATIVE.

12:28PM 24 AND MR. TIEDEMANN, IF YOU CAN HIGHLIGHT THAT.

12:28PM 25 THOSE ARE THE TWO CHOICES; RIGHT?

12:28PM 1 A. CORRECT.

12:28PM 2 Q. RIGHT.

12:28PM 3 A. YES.

12:28PM 4 Q. AND THEN IF IT'S HIV-1 NAT NEGATIVE, THEN THE FINAL THING

12:28PM 5 THERE IS NEGATIVE FOR HIV-1.

12:28PM 6 DO YOU SEE THAT?

12:28PM 7 A. I DO.

12:28PM 8 Q. OKAY. WOULD YOU EXPECT YOUR DOCTOR TO BE FAMILIAR WITH

12:28PM 9 THE CENTER FOR DISEASE CONTROL PROTOCOL?

12:28PM 10 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

12:28PM 11 401. 403.

12:28PM 12 THE COURT: IT DOES CALL FOR SPECULATION, DOESN'T

12:28PM 13 IT?

12:28PM 14 MR. COOPERSMITH: OKAY. I'LL ASK A DIFFERENT

12:28PM 15 QUESTION, YOUR HONOR.

12:28PM 16 Q. MS. TOMPKINS, DO YOU KNOW IF DR. ASIN IS FAMILIAR WITH THE

12:28PM 17 CDC PROTOCOLS?

12:28PM 18 MR. BOSTIC: 401, 403, YOUR HONOR.

12:28PM 19 THE COURT: UNLESS YOU LAY A FOUNDATION.

12:29PM 20 MR. COOPERSMITH: I'M JUST ASKING HER PERSONAL

12:29PM 21 KNOWLEDGE.

12:29PM 22 THE COURT: RIGHT. UNLESS YOU LAY A FOUNDATION FOR

12:29PM 23 THE 401 OBJECTION.

12:29PM 24 BY MR. COOPERSMITH:

12:29PM 25 Q. SURE. AS FAR AS YOU KNOW, IS DR. ASIN A MEDICAL DOCTOR?

12:29PM 1 A. YES.

12:29PM 2 Q. OKAY. YOU'RE CONFIDENT IN THAT?

12:29PM 3 A. YES.

12:29PM 4 Q. AND DO YOU UNDERSTAND THAT -- WELL, IN FACT, YOU GOT YOUR

12:29PM 5 HIV TEST THROUGH DR. ASIN; RIGHT?

12:29PM 6 A. YES, I DID.

12:29PM 7 Q. AND YOU HAD A CONVERSATION WITH HIM ABOUT THOSE; RIGHT?

12:29PM 8 A. I DID.

12:29PM 9 Q. OKAY. NOW, YOU ALSO SAID ON DIRECT THAT YOU HAD A COUPLE

12:29PM 10 OF CONVERSATIONS WITH PEOPLE AT THERANOS; IS THAT RIGHT?

12:29PM 11 A. I BELIEVE I HAD TWO, AND THEN I DIDN'T REMEMBER THE SECOND

12:29PM 12 ONE INITIALLY, BUT I DO BELIEVE I HAD TWO.

12:29PM 13 Q. THANK YOU.

12:29PM 14 I WANT TO SHOW YOU AN EXHIBIT. IT'S GOING TO BE IN THE

12:29PM 15 BINDER THAT I HANDED YOU, MS. TOMPKINS.

12:29PM 16 A. UH-HUH.

12:29PM 17 Q. AND THAT'S EXHIBIT 14259.

12:30PM 18 A. DID YOU SAY 14?

12:30PM 19 Q. YES. SORRY. IT'S EXHIBIT 14259.

12:30PM 20 A. OH, OKAY.

12:30PM 21 Q. AND DO YOU SEE THAT THIS IS AN EMAIL STRING FROM MAY 12TH

12:30PM 22 OF 2015?

12:30PM 23 A. YES, I DO.

12:30PM 24 Q. AND YOU'RE NOT ON THESE EMAILS; RIGHT?

12:30PM 25 A. NO, I AM NOT.

12:30PM 1 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 14259
12:30PM 2 FOR THE FOLLOWING REASONS: THE BATES NUMBER IS PART OF THE
12:30PM 3 STIPULATION WITH THE GOVERNMENT ON AUTHENTICITY AND WE OFFER IT
12:30PM 4 UNDER THE BUSINESS RECORDS EXCEPTION; 803(6) IN THAT FOUNDATION
12:30PM 5 HAS BEEN PREVIOUSLY LAID FOR EXACTLY THIS TYPE OF INTERNAL
12:31PM 6 EMAIL.

12:31PM 7 IN FACT, WITH THE PREVIOUS WITNESS, WE SAW AN INTERNAL
12:31PM 8 EMAIL LIKE THIS.

12:31PM 9 SO WE WOULD OFFER IT FOR THOSE REASONS.

12:31PM 10 MR. BOSTIC: SO, YOUR HONOR, I WOULD OBJECT UNDER
12:31PM 11 HEARSAY, 801. THERE ARE A COUPLE OF LAYERS OF HEARSAY HERE. I
12:31PM 12 DON'T AGREE THE FOUNDATION HAS BEEN LAID.

12:31PM 13 THE COURT: SO AUTHENTICITY HAS BEEN STIPULATED TO?

12:31PM 14 MR. BOSTIC: CORRECT, YOUR HONOR.

12:31PM 15 THE COURT: RIGHT. SO THE REMAINING BASIS FOR
12:31PM 16 803(6), DID YOU WANT TO GO THROUGH THAT? HOW DO YOU PROPOSE TO
12:31PM 17 DEAL WITH THAT?

12:31PM 18 MR. COOPERSMITH: YES, YOUR HONOR. SO TWO
12:31PM 19 POSSIBILITIES.

12:31PM 20 THIS WITNESS, MS. TOMPKINS, SHE DIDN'T WORK AT THERANOS,
12:31PM 21 SO SHE'S NOT GOING TO HAVE ANY KNOWLEDGE OF THE INTERNAL EMAILS
12:31PM 22 OF THERANOS, RIGHT. I'M CONFIDENT OF THAT.

12:31PM 23 HOWEVER, WE THINK THAT, THROUGH THE PREVIOUS WITNESSES
12:31PM 24 THAT THE COURT HAS SEEN OVER THE COURSE OF THIS TRIAL, OVER AND
12:32PM 25 OVER AGAIN WE HAVE BEEN LAYING FOUNDATION FOR EXACTLY THIS TYPE

12:32PM 1 OF INTERNAL EMAIL DISCUSSING A PATIENT RESULT OR ADDRESSING
12:32PM 2 OTHER MATTERS WITHIN THE LABORATORY AT THERANOS.

12:32PM 3 SO WE THINK THAT'S ADEQUATE FOUNDATION UNDER 803(6).

12:32PM 4 IF FOR ANY REASON YOUR HONOR DOESN'T AGREE WITH THAT, WE
12:32PM 5 WOULD ALSO OFFER IT FOR A NONHEARSAY PURPOSE, NOTICE TO
12:32PM 6 MR. BALWANI OF THE MANNER IN WHICH THIS PARTICULAR MATTER WITH
12:32PM 7 MS. TOMPKINS WAS HANDLED, BECAUSE AS YOU CAN SEE, MR. BALWANI
12:32PM 8 IS ON THE EMAIL STRING.

12:32PM 9 THE COURT: MR. BOSTIC.

12:32PM 10 MR. BOSTIC: IT'S HEARSAY. IT'S NOT JUST THIS
12:32PM 11 EMAIL. THE EMAIL REFLECTS MULTIPLE CONVERSATIONS, AGAIN,
12:32PM 12 OUTSIDE OF COURT, INCLUDING BY INDIVIDUALS WHO ARE NOT
12:32PM 13 WITNESSES IN THIS CASE.

12:33PM 14 AND AS TO NOTICE, I DON'T THINK THAT MR. BALWANI'S NOTICE
12:33PM 15 OF THIS SPECIFIC INTERACTION IS RELEVANT UNDER 401.

12:33PM 16 THE COURT: WELL, I HAD THAT THOUGHT AS WELL.

12:33PM 17 DO YOU WANT TO REDACT SOME OF THIS? IT SEEMS LIKE THERE'S
12:33PM 18 MULTIPLE HEARSAY HERE.

12:33PM 19 IF YOU WANT TO ATTEMPT TO DO THAT, YOU CAN ASK OTHER
12:33PM 20 QUESTIONS WHILE YOU ATTEMPT TO DO THAT.

12:33PM 21 MR. COOPERSMITH: YOUR HONOR, I CAN DO THAT.

12:33PM 22 I WOULD JUST SAY, THOUGH, THAT I THINK WE HAVE SEEN A
12:33PM 23 PLETHORA OF EXHIBITS WITH THE SAME MULTIPLE HEARSAY. THAT'S
12:33PM 24 THE ESSENCE OF A BUSINESS RECORD.

12:33PM 25 AND I THINK THERE'S BEEN, INCLUDING WITH THE PREVIOUS

12:33PM 1 WITNESS, LOTS OF THESE DOCUMENTS THAT REFLECT INTERNAL
12:33PM 2 CONVERSATIONS.

12:33PM 3 BUT ON THE NOTICE ISSUE, IF I CAN QUICKLY ADDRESS THAT,
12:33PM 4 EVEN IF WE ENTER IT FOR THAT NONHEARSAY PURPOSE, I THINK THAT
12:33PM 5 THE NOTICE -- JUST TO BE VERY SPECIFIC, THIS IS THE GOVERNMENT
12:33PM 6 ARGUING THIS PARTICULAR ISSUE WITH MS. TOMPKINS'S HIV TEST, AND
12:33PM 7 THIS WOULD BE NOTICE TO MR. BALWANI OF SPECIFICALLY HOW THIS
12:33PM 8 VERY ISSUE WITH MS. TOMPKINS'S TEST WAS HANDLED AND HOW IT
12:34PM 9 SHOULD BE HANDLED BASED ON PEOPLE IN THE LAB TELLING HIM WHAT
12:34PM 10 THEY THOUGHT.

12:34PM 11 SO THAT IS, IN OUR VIEW, CLASSIC NOTICE TO MR. BALWANI.
12:34PM 12 EVEN IF IT CAN'T COME IN UNDER 801(3)(6), IT WOULD BE FOR THAT
12:34PM 13 NOTICE PURPOSE.

12:34PM 14 THE COURT: I THINK THERE'S STILL SOME REDACTIONS
12:34PM 15 THAT NEED TO BE COMPLETED, AND MAYBE THAT LITTLE PARAGRAPH IS
12:34PM 16 SOMETHING THAT YOU SHOULD LOOK AT.

12:34PM 17 BUT IF YOU CAN ASK ANOTHER QUESTION WHILE YOU LOOK AT
12:34PM 18 THIS --

12:34PM 19 MR. COOPERSMITH: WELL, YOUR HONOR, IF THE CONCERN
12:34PM 20 IS THE SECOND EMAIL IN THE STRING, WAS THAT THE COURT'S
12:34PM 21 CONCERN?

12:34PM 22 THE COURT: FROM MR. FLOREY, IS THAT IT?

12:34PM 23 MR. COOPERSMITH: WELL, OKAY. YOU'RE TALKING ABOUT
12:34PM 24 THE EMAIL FROM MR. FLOREY?

12:34PM 25 THE COURT: YES.

12:34PM 1 MR. COOPERSMITH: OKAY.

12:34PM 2 IF THE COURT WANTS TO REDACT THAT EMAIL, IT'S NOT MY
12:34PM 3 PREFERENCE, YOUR HONOR. I THINK IT'S ADMISSIBLE FOR THE
12:34PM 4 PURPOSES THAT I GAVE. BUT IF THAT'S THE COURT'S RULING, THEN
12:34PM 5 WE WOULD REDACT THAT EMAIL.

12:35PM 6 THE COURT: IF THAT'S REDACTED, THEN I'LL ADMIT THIS
12:35PM 7 FOR NOTICE ONLY --

12:35PM 8 MR. COOPERSMITH: OKAY.

12:35PM 9 THE COURT: -- NOTICE TO YOUR CLIENT. NOT FOR THE
12:35PM 10 TRUTH OF THE MATTER ASSERTED.

12:35PM 11 MR. COOPERSMITH: OKAY.

12:35PM 12 AND I MIGHT ASK HER A QUESTION, NOT FROM THE DOCUMENT,
12:35PM 13 ABOUT THE MATTERS DISCUSSED IN THAT EMAIL THAT'S GOING TO BE
12:35PM 14 REDACTED.

12:35PM 15 BUT I UNDERSTAND THE DOCUMENT WILL BE ADMITTED WITHOUT
12:35PM 16 THAT PORTION.

12:35PM 17 THE COURT: OKAY.

12:35PM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:35PM 19 SO MAY WE PUBLISH THE REDACTED VERSION?

12:35PM 20 THE COURT: YES.

12:35PM 21 MR. COOPERSMITH: AND ARE WE CLEAR ON WHAT IS GOING
12:35PM 22 TO BE REDACTED?

12:35PM 23 (DEFENDANT'S EXHIBIT 14259, REDACTED, WAS RECEIVED IN
12:35PM 24 EVIDENCE.)

12:35PM 25 BY MR. COOPERSMITH:

12:35PM 1 Q. OKAY. NOW CAN YOU SEE THE EXHIBIT ON YOUR SCREEN,
12:35PM 2 MS. TOMPKINS?
12:35PM 3 A. YES, I CAN.
12:35PM 4 Q. SO LET'S GO TO THE VERY BOTTOM EMAIL THAT IS ON YOUR
12:35PM 5 SCREEN. AND THAT'S FROM LAUREN TSUGAWA.
12:36PM 6 DO YOU SEE THAT?
12:36PM 7 A. YES, I SEE IT.
12:36PM 8 Q. AND SHE WRITES, "I JUST SPOKE WITH GUEST," AND YOU CAN
12:36PM 9 JUST MAKE OUT THE E AND THE T.
12:36PM 10 DO YOU SEE THAT?
12:36PM 11 A. YES, I SEE THAT.
12:36PM 12 Q. AND THAT'S YOUR INITIALS, E.T.?
12:36PM 13 A. THOSE ARE MY INITIALS, YES.
12:36PM 14 Q. OKAY. AND THEN IT HAS AN ACC NUMBER.
12:36PM 15 AND IT GOES ON TO SAY, "SHE WANTS A CALL BACK TO EXPLAIN
12:36PM 16 WHY SHE TESTED NON-REACTIVE FOR HIV-1 AND 2, AND NOT DETECTED
12:36PM 17 FOR HIV-1 RNA BUT REACTIVE FOR HIV-1 PLUS 2. SHE SAID SHE
12:36PM 18 ALREADY CALLED DR. ASIN AND HE TOLD HER TO CALL US."
12:36PM 19 DO YOU SEE THAT?
12:36PM 20 A. YES, I DO SEE THAT.
12:36PM 21 Q. SO, IN FACT, YOU DID HAVE THIS INITIAL CONVERSATION WITH A
12:36PM 22 CUSTOMER SERVICE REPRESENTATIVE?
12:36PM 23 A. YES, I DID.
12:36PM 24 Q. AND YOU MAY NOT REMEMBER THE NAME, BUT IT APPEARS THAT'S
12:36PM 25 LAUREN TSUGAWA; IS THAT RIGHT?

12:36PM 1 A. I DON'T REMEMBER THE NAME OF THE PERSON I HAD THAT

12:36PM 2 CONVERSATION WITH, I'M SORRY.

12:36PM 3 Q. TOTALLY UNDERSTANDABLE.

12:36PM 4 NOW, AFTER THAT, THOUGH, AS YOU CAN SEE FROM THIS EMAIL,

12:37PM 5 IT SAYS YOU WANTED A CALL BACK, AND IN FACT, YOU DID WANT A

12:37PM 6 CALL BACK; IS THAT RIGHT?

12:37PM 7 A. YES.

12:37PM 8 Q. AND THEN YOU HAD ANOTHER CONVERSATION WITH ANOTHER PERSON

12:37PM 9 THEN AT THERANOS; IS THAT RIGHT?

12:37PM 10 A. APPARENTLY, YES.

12:37PM 11 Q. AND YOU CAN'T REMEMBER WHO THAT WAS EITHER; RIGHT?

12:37PM 12 A. NO. I DON'T REMEMBER THE PERSON'S NAME. I REMEMBER JUST

12:37PM 13 NOW THAT IT HAPPENED.

12:37PM 14 Q. OKAY. AND YOU ALSO CAN'T REMEMBER IF THE PERSON WHO YOU

12:37PM 15 SPOKE TO THE SECOND TIME WAS A MEDICAL PROFESSIONAL OR ANOTHER

12:37PM 16 CUSTOMER SERVICE REPRESENTATIVE?

12:37PM 17 A. CORRECT.

12:37PM 18 Q. OKAY. IF YOU JUST THINK ABOUT THAT CALL AS BEST YOU CAN,

12:37PM 19 I KNOW IT'S SOME YEARS AGO, DO YOU REMEMBER GOING OVER THE CDC

12:37PM 20 PROTOCOL WITH THE PERSON ON THE PHONE?

12:37PM 21 A. I REMEMBER MENTION -- LIKE, I REMEMBER HEARING A MENTION

12:37PM 22 OF IT. I DON'T KNOW THAT THE TERM "CDC PROTOCOL" WAS ACTUALLY

12:37PM 23 USED, BUT THE PERSON DID TRY TO EXPLAIN TO ME, LIKE, HOW THE

12:38PM 24 TEST WORKS ESSENTIALLY.

12:38PM 25 Q. OKAY. THANK YOU, MS. TOMPKINS.

12:38PM 1 I'M SORRY. WERE YOU FINISHED WITH YOUR ANSWER? I

12:38PM 2 DIDN'T --

12:38PM 3 A. THAT'S THE BEST I CAN RECALL.

12:38PM 4 Q. OKAY. THANK YOU.

12:38PM 5 SO LET'S LOOK AT THE EMAIL ABOVE THE ONE THAT HAS BEEN

12:38PM 6 REDACTED.

12:38PM 7 AND THEN THERE'S AN EMAIL FROM MR. BALWANI. AND HE

12:38PM 8 WRITES, "WE SHOULD POINT TO HER PHYSICIAN. WE SHOULDN'T TRY TO

12:38PM 9 ANSWER THIS QUESTION FOR HER..."

12:38PM 10 DO YOU SEE THAT?

12:38PM 11 A. OH, THAT'S THE ONE FROM MR. BALWANI.

12:38PM 12 Q. YES.

12:38PM 13 A. YES, I SEE THAT.

12:38PM 14 Q. AND YOU ACTUALLY HAD A PHYSICIAN; RIGHT?

12:38PM 15 A. YES, WITH WHOM I HAD ALREADY SPOKEN.

12:38PM 16 Q. RIGHT. THAT'S DR. ASIN?

12:38PM 17 A. YES.

12:38PM 18 Q. AND ABOVE THAT THERE'S AN EMAIL FROM MICAH NIES.

12:38PM 19 DO YOU SEE THAT?

12:38PM 20 A. I'M TRYING TO FIND IT. THERE WE GO, YES.

12:39PM 21 Q. AND THEN THAT'S TO MR. BALWANI AND OTHERS.

12:39PM 22 DO YOU SEE THAT?

12:39PM 23 A. YES, I DO.

12:39PM 24 Q. AND THAT MICAH SAYS, "AGREED. THIS IS REALLY A

12:39PM 25 CONVERSATION BETWEEN HER AND HER PHYSICIAN TO ENSURE THAT SHE

12:39PM 1 IS FULLY INFORMED ABOUT TESTING AND HER OPTIONS."

12:39PM 2 DO YOU SEE THAT?

12:39PM 3 A. YES, I DO.

12:39PM 4 Q. AND THIS SAYS, "THE CLS" -- JUST STOPPING THERE, DO YOU

12:39PM 5 HAVE ANY UNDERSTANDING THAT THAT MEANS CLINICAL LAB SCIENTIST?

12:39PM 6 A. I DO NOW.

12:39PM 7 Q. BECAUSE I JUST TOLD YOU THAT?

12:39PM 8 A. YES.

12:39PM 9 Q. OKAY. AND THEN IT SAYS, "AND/OR DANIEL CAN SUPPORT THE

12:39PM 10 PHYSICIAN TO SUPPORT HIS PATIENT."

12:39PM 11 DO YOU SEE THAT?

12:39PM 12 A. I DO SEE THAT.

12:39PM 13 Q. OKAY. YOU CAN PUT THAT EXHIBIT ASIDE, OR -- YES, WE'LL

12:39PM 14 TAKE IT OFF THE SCREEN.

12:39PM 15 OKAY. THE GOVERNMENT ASKED YOU ABOUT ANOTHER EXHIBIT. I

12:39PM 16 BELIEVE IT WAS 5484.

12:39PM 17 IF YOU CAN FIND THAT --

12:40PM 18 A. I HAVE IT.

12:40PM 19 Q. YOU HAVE THAT? GREAT.

12:40PM 20 EXHIBIT 5484 IS THE TEST THAT YOU HAD IN AUGUST OF 2021;

12:40PM 21 IS THAT RIGHT?

12:40PM 22 A. YES.

12:40PM 23 Q. AND YOU WENT TO GET THIS TEST AT THE CONTRA COSTA HEALTH

12:40PM 24 SERVICES LAB?

12:40PM 25 A. THAT'S CORRECT, YES.

12:40PM 1 Q. AND YOU GOT A RECOMMENDATION TO GO TO THAT LAB BY A
12:40PM 2 GOVERNMENT FBI AGENT; IS THAT RIGHT?

12:40PM 3 A. I REQUESTED HELP FINDING A LOCATION TO GET ANOTHER TEST
12:40PM 4 DONE.

12:40PM 5 Q. OKAY.

12:40PM 6 A. I WAS NOT TOLD DO THIS. I ASKED FOR HELP AND SHE AGREED
12:40PM 7 TO LOOK FOR ME.

12:40PM 8 Q. RIGHT. AND SHE RECOMMENDED THAT THAT'S ONE OF THE PLACES
12:40PM 9 YOU COULD GO GET THE TEST?

12:40PM 10 A. YES.

12:40PM 11 Q. AND THAT WAS A FEMALE FBI AGENT?

12:40PM 12 A. YES.

12:40PM 13 Q. AND THE REASON YOU WANTED TO DO THAT WAS BECAUSE YOU
12:40PM 14 WANTED TO HAVE ANOTHER PIECE OF EVIDENCE FOR THIS CASE?

12:40PM 15 A. A RECENT, YEAH, A RECENT TEST.

12:40PM 16 Q. OKAY. IF YOU LOOK AT THIS, THIS WAS A TEST THAT WAS DONE
12:40PM 17 WITH A SWAB ON YOUR CHEEK; IS THAT RIGHT?

12:41PM 18 A. THAT'S CORRECT.

12:41PM 19 Q. AND IT LOOKS LIKE IT SAYS WHAT THE MECHANISM IS.
12:41PM 20 DO YOU SEE IN THE FIRST PARAGRAPH AFTER YOUR NAME AND
12:41PM 21 OTHER INFORMATION, IT SAYS THAT IT WAS PERFORMED USING THE
12:41PM 22 ALERE DETERMINED HIV RAPID TEST KIT.

12:41PM 23 DO YOU SEE THAT?

12:41PM 24 A. I DO SEE THAT.

12:41PM 25 Q. OKAY. AND THEN IF YOU GO DOWN, DO YOU SEE WHERE IT SAYS

12:41PM 1 NEGATIVE?

12:41PM 2 A. YES.

12:41PM 3 Q. AND THEN IT READS, "EVIDENCE OF HIV ANTIGEN OR ANTIBODY

12:41PM 4 WERE NOT DETECTED."

12:41PM 5 RIGHT?

12:41PM 6 A. YES, I SEE THAT.

12:41PM 7 Q. AND THEN "A NEGATIVE TEST RESULT ONLY REFLECTS THE HIV

12:41PM 8 ANTIGEN/ANTIBODY STATUS ON THE DATE THAT THE SPECIMEN WAS

12:41PM 9 OBTAINED FROM THE ABOVE-NAMED PERSON."

12:41PM 10 DO YOU SEE THAT?

12:41PM 11 A. YES, I DO.

12:41PM 12 Q. AND THAT WOULD HAVE BEEN AUGUST 10TH, 2021?

12:41PM 13 A. THAT'S CORRECT.

12:41PM 14 Q. AND THIS WOULD HAVE BEEN ABOUT SIX YEARS AFTER THE

12:41PM 15 THERANOS TEST; IS THAT RIGHT?

12:41PM 16 A. APPROXIMATELY, YES.

12:42PM 17 Q. OKAY.

12:42PM 18 NOTHING FURTHER, YOUR HONOR.

12:42PM 19 THE COURT: REDIRECT?

12:42PM 20 MR. BOSTIC: BRIEFLY, YOUR HONOR.

12:42PM 21 **REDIRECT EXAMINATION**

12:42PM 22 BY MR. BOSTIC:

12:42PM 23 Q. MS. TOMPKINS, JUST A COUPLE OF FOLLOW-UP QUESTIONS FOR

12:42PM 24 YOU.

12:42PM 25 DO YOU RECALL LOOKING AT EXHIBIT 14259 WITH

12:42PM 1 MR. COOPERSMITH?

12:42PM 2 A. YES, I DO.

12:42PM 3 Q. AND THAT EXHIBIT INDICATES THAT YOU CALLED THERANOS TO TRY
12:42PM 4 TO GET AN EXPLANATION FOR WHY YOU TESTED NONREACTIVE FOR HIV-1
12:42PM 5 AND 2 AND NOT DETECTED FOR HIV-1 RNA, BUT REACTIVE FOR HIV-1
12:42PM 6 PLUS 2.

12:42PM 7 DO YOU REMEMBER THAT?

12:42PM 8 A. YES.

12:42PM 9 Q. AND IS THAT WHY YOU CALLED THERANOS TO TRY TO GET AN
12:42PM 10 EXPLANATION FOR THE RESULTS THAT YOU WERE SEEING?

12:42PM 11 A. THAT'S EXACTLY WHY.

12:42PM 12 Q. AFTER YOUR CONVERSATIONS WITH PEOPLE AT THERANOS, AND
12:42PM 13 AFTER YOUR DISCUSSION WITH MR. COOPERSMITH JUST NOW, AND YOUR
12:42PM 14 REVIEW OF THE CDC MATERIALS, DO YOU HAVE ANY EXPLANATION FOR
12:42PM 15 WHY YOU TESTED REACTIVE FOR HIV-1 AND 2 ANTIBODIES IN MAY OF
12:43PM 16 2015 OTHER THAN THAT TEST NOT BEING ACCURATE?

12:43PM 17 A. NO.

12:43PM 18 MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.

12:43PM 19 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

12:43PM 20 THE COURT: MAY THIS WITNESS BE EXCUSED?

12:43PM 21 MR. COOPERSMITH: YES, YOUR HONOR.

12:43PM 22 MR. LEACH: YES, YOUR HONOR.

12:43PM 23 THE COURT: YOU'RE EXCUSED.

12:43PM 24 THE WITNESS: THANK YOU.

12:43PM 25 THE COURT: YOU'RE WELCOME.

12:43PM 1 THE WITNESS: SHOULD I LEAVE THE BOOKS UP HERE?

12:43PM 2 THE COURT: JUST LEAVE IT HERE AND WE'LL CLEAN IT

12:43PM 3 UP.

12:43PM 4 DO YOU HAVE ANOTHER WITNESS TO CALL?

12:43PM 5 MR. BOSTIC: YES, YOUR HONOR.

12:43PM 6 THE COURT: DO YOU WANT TO HAVE A DISCUSSION BEFORE

12:43PM 7 THE WITNESS TESTIFIES?

12:43PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

12:43PM 9 THE COURT: WELL, THIS IS A GOOD TIME FOR A BREAK.

12:43PM 10 LET'S ALL TAKE A BREAK AND WE'LL BE BACK IN JUST A MOMENT.

12:44PM 11 (JURY OUT AT 12:44 P.M.)

12:44PM 12 THE COURT: ALL RIGHT. PLEASE BE SEATED.

12:44PM 13 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT THE

12:44PM 14 COURTROOM. MS. TOMPKINS HAS LEFT THE COURTROOM.

12:44PM 15 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

12:44PM 16 THE NEXT WITNESS, MR. LEACH, IS?

12:44PM 17 MR. LEACH: BRIAN GROSSMAN, YOUR HONOR.

12:44PM 18 THE COURT: ALL RIGHT. THANK YOU.

12:44PM 19 MS. WALSH?

12:44PM 20 MS. WALSH: YES, YOUR HONOR. WE JUST HAD A FEW

12:44PM 21 ISSUES WE WANTED TO RAISE WITH THE COURT.

12:44PM 22 YOUR HONOR, THE GOVERNMENT NOTIFIED US THAT THEY INTEND TO

12:44PM 23 OFFER ANSWERS TO INTERROGATORIES THAT WERE LODGED IN THE CIVIL

12:45PM 24 LITIGATION BROUGHT BY PFM AGAINST THERANOS AND MS. HOLMES AND

12:45PM 25 MR. BALWANI.

12:45PM 1 THERE ARE THREE EXHIBITS IN QUESTION, 5860, 5858, AND
12:45PM 2 5859. ALL OF THEM WERE FILED OR SIGNED SIX MONTHS AFTER
12:45PM 3 MR. BALWANI LEFT THERANOS.

12:45PM 4 THE FIRST SET, 5860, WAS LODGED BY THERANOS, AND THE TWO
12:45PM 5 OTHERS WERE BY MR. BALWANI INDIVIDUALLY.

12:45PM 6 SO THESE DOCUMENTS ARE WELL AFTER THE CHARGED CONSPIRACY,
12:45PM 7 THEY'RE WELL AFTER MR. GROSSMAN'S PFM INVESTMENT IN THE CASE,
12:45PM 8 THEY'RE WELL AFTER MR. BALWANI LEAVES THERANOS.

12:46PM 9 I JUST DON'T SEE THE RELEVANCE OF THEM.

12:46PM 10 AND CERTAINLY AS TO THE THERANOS INTERROGATORY ANSWERS,
12:46PM 11 MR. BALWANI WAS NOT DIRECTING THERANOS IN ANY WAY TO ANSWER
12:46PM 12 THOSE INTERROGATORIES. HE WAS LONG GONE AND HAD NO CONTROL
12:46PM 13 OVER THE ATTORNEYS OR ANYONE ELSE WHO ANSWERED THOSE
12:46PM 14 INTERROGATORIES.

12:46PM 15 SO WE WOULD OBJECT TO THEIR ADMISSION ON 401 AND 403 AND,
12:46PM 16 AS TO THE THERANOS ONES, HEARSAY.

12:46PM 17 THE COURT: OKAY.

12:46PM 18 MR. LEACH.

12:46PM 19 MR. LEACH: YOUR HONOR, EXHIBIT 5858 IS
12:46PM 20 MR. BALWANI'S SIGNED, SWORN, UNDER OATH ANSWERS TO QUESTIONS IN
12:46PM 21 A LAWSUIT INVOLVING, I WANT TO SAY THE EXACT SAME BUT I'LL BE
12:46PM 22 CAREFUL, SUBSTANTIALLY THE SAME ALLEGATIONS THAT ARE AT ISSUE
12:46PM 23 WITH THIS CASE.

12:47PM 24 HE'S ASKED QUESTIONS, WHAT DID YOU TELL PFM?

12:47PM 25 AND HE ANSWERS THEM UNDER OATH.

12:47PM 1 THIS IS THE EQUIVALENT OF TESTIMONY THAT HE GAVE BEFORE
12:47PM 2 THE S.E.C. OR IN THIS COURT. HE SHOULD BE HELD TO THE ANSWERS.
12:47PM 3 THESE ARE SWORN ADMISSIONS BY HIM.

12:47PM 4 I CAN'T EVEN COMPREHEND THE RELEVANCE OR THE 403
12:47PM 5 OBJECTION.

12:47PM 6 THE TIMING OF WHEN HE MADE THE ADMISSION IS COMPLETELY
12:47PM 7 IRRELEVANT.

12:47PM 8 UNDER THAT LOGIC, THE THINGS THAT HE SAYS UNDER OATH IN
12:47PM 9 THIS COURTROOM WOULD NOT BE ADMISSIBLE, AND WE KNOW THAT'S NOT
12:47PM 10 RIGHT.

12:47PM 11 SO THESE ARE HIS SWORN ANSWERS TO QUESTIONS LITERALLY
12:47PM 12 ABOUT THE SUBJECT MATTER OF THIS LAWSUIT. I CAN'T COMPREHEND
12:47PM 13 SOMETHING MORE RELEVANT OR MORE WITHIN THE GOVERNMENT'S PURVIEW
12:47PM 14 TO OFFER IF IT WANTS.

12:47PM 15 THAT'S EXHIBIT 5858.

12:47PM 16 AND MY INTENTION IS NOT TO OFFER THE ENTIRE DOCUMENT, BUT
12:47PM 17 THERE ARE SPECIFIC QUESTIONS HE'S ASKED, AND I -- AND THESE ARE
12:48PM 18 INTERROGATORIES, SO I DON'T THINK THERE'S A RULE OF
12:48PM 19 COMPLETENESS ISSUE HERE. HE'S ASKED A QUESTION, HE'S ABLE TO
12:48PM 20 CONSULT WITH HIS LAWYERS, AND THEN HE GIVES AN ANSWER UNDER
12:48PM 21 OATH.

12:48PM 22 SO --

12:48PM 23 THE COURT: LET ME ASK YOU, DO YOU INTEND TO LAY A
12:48PM 24 FOUNDATION FOR THE JURY AS TO WHAT AN INTERROGATORY IS AND THAT
12:48PM 25 PROTOCOL, THAT PROCEDURE?

12:48PM 1 MR. LEACH: I INTEND TO ASK THIS WITNESS, WHO WAS A
12:48PM 2 PARTY TO THE LAWSUIT WHO RECEIVED THESE DOCUMENTS AND KNOWS THE
12:48PM 3 CONTEXT, WAS THERE AN OCCASION WHEN YOU WERE -- WHEN YOU,
12:48PM 4 THROUGH YOUR LAWYERS, WERE ABLE TO ASK QUESTIONS OF MR. BALWANI
12:48PM 5 UNDER OATH? DO YOU KNOW WHAT THIS DOCUMENT IS? DO YOU SEE THE
12:48PM 6 SIGNATURE OF MR. BALWANI?

12:48PM 7 I DON'T INTEND TO GET INTO THE DETAILS OF THE LAWSUIT. I
12:48PM 8 DON'T INTEND -- I DON'T NEED TO INTRODUCE THE COVER PAGE.

12:48PM 9 BUT IT'S THE QUESTION AND THE ANSWER AND THE FACT THAT
12:48PM 10 IT'S COMING FROM MR. BALWANI THAT I THINK IS FULLY APPROPRIATE
12:48PM 11 THROUGH A LITIGANT IN THAT LAWSUIT.

12:48PM 12 THE COURT: AND SO HE WILL BE ABLE TO, TO YOUR
12:49PM 13 QUESTION, HE'LL BE ABLE TO SAY HE LOOKED AT THIS EITHER WITH OR
12:49PM 14 WITHOUT COUNSEL, BUT HE'S SEEN IT BEFORE?

12:49PM 15 MR. LEACH: YES.

12:49PM 16 THE COURT: OKAY. AND IS IT A -- WHAT ARE WE
12:49PM 17 TALKING ABOUT? IS IT TWO QUESTIONS? A SENTENCE? A PARAGRAPH?

12:49PM 18 MR. LEACH: MY CURRENT INTENTION, YOUR HONOR, IS ONE
12:49PM 19 PAGE. IT'S A QUESTION ABOUT HOW MUCH STOCK MR. BALWANI OWNED.

12:49PM 20 I HAVEN'T MADE A FINAL DECISION ON THE REMAINDER.

12:49PM 21 THE EXHIBIT 5858 IS 40 PAGES LONG, BUT I DON'T INTEND TO
12:49PM 22 INTRODUCE EVERY SINGLE QUESTION AND EVERY SINGLE ANSWER.

12:49PM 23 SO --

12:49PM 24 THE COURT: OKAY.

12:49PM 25 MR. LEACH: MS. WALSH ALSO MENTIONED THERANOS'S

12:49PM 1 RESPONSES TO THE INTERROGATORIES.

12:49PM 2 AND THE REASON THOSE ARE ADMISSIBLE IS IN CERTAIN
12:49PM 3 INTERROGATORY RESPONSES, MR. BALWANI SAYS, UNDER OATH, IN
12:50PM 4 RESPONSE, MR. BALWANI INCORPORATES -- IT SAYS IS, I THINK HE
12:50PM 5 MEANT ITS, "RESPONSE TO INTERROGATORY 14 AS FULLY SET FORTH
12:50PM 6 HERE. HE, UNDER CERTAIN CIRCUMSTANCES, INCORPORATES THERANOS'S
12:50PM 7 ANSWER, BASICALLY SAYING, I'M MAKING THIS A PART OF MY ANSWER.

12:50PM 8 SO I DON'T THINK IT MATTERS WHO SIGNED THERANOS'S
12:50PM 9 INTERROGATORIES, WHEN THEY WERE MADE.

12:50PM 10 MR. BALWANI IS INCORPORATING THAT AS PART OF HIS ANSWER,
12:50PM 11 AND IF I SAY, IN RESPONSE TO A QUESTION HERE, SEE THIS
12:50PM 12 DOCUMENT, I SHOULD -- THAT'S PART OF MY ANSWER.

12:50PM 13 SO THAT'S WHY I THINK IT WOULD BE APPROPRIATE IF THE
12:50PM 14 GOVERNMENT CHOOSES TO INTRODUCE THOSE PORTIONS OF THERANOS'S
12:50PM 15 RESPONSES.

12:50PM 16 THE COURT: SO THESE ARE, THESE ARE -- 5860 IS THE
12:50PM 17 THERANOS'S RESPONSE, THE COMPANY'S RESPONSES TO
12:50PM 18 INTERROGATORIES, AND THERE'S A QUESTION IN HERE, OR EXCUSE ME,
12:50PM 19 AN ANSWER FROM MR. BALWANI IN THAT?

12:50PM 20 MR. LEACH: IN THIS, BOTH THERANOS AND MR. BALWANI
12:50PM 21 ARE ASKED QUESTIONS SEPARATELY.

12:51PM 22 IN HIS ANSWER, MR. BALWANI SAYS, UNDER OATH, I INCORPORATE
12:51PM 23 WHAT THERANOS SAYS IN RESPONSE TO THIS QUESTION.

12:51PM 24 AND IT'S THAT EXPRESS INCORPORATION THAT MAKES IT AN
12:51PM 25 ADOPTED ADMISSION OR AN AUTHORIZED ADMISSION.

12:51PM 1 SO IT'S NOT HEARSAY. IT'S SOMETHING THAT MR. BALWANI IS
12:51PM 2 SAYING OR ADOPTING UNDER OATH.

12:51PM 3 THE COURT: I UNDERSTAND.

12:51PM 4 MR. BALWANI, YOU SEEK TO GET IN WHATEVER HE SAID, I
12:51PM 5 INCORPORATE NUMBER 14, AND YOU'RE SEEKING TO INTRODUCE
12:51PM 6 NUMBER 14?

12:51PM 7 MR. LEACH: YES.

12:51PM 8 THE COURT: OKAY.

12:51PM 9 MR. LEACH: I'M USING THAT AS AN EXAMPLE,
12:51PM 10 YOUR HONOR. I DON'T HAVE THE PARTICULAR ONE HANDY.

12:51PM 11 THE COURT: RIGHT. OKAY.

12:51PM 12 MS. WALSH: YOUR HONOR, MAY I BE HEARD?

12:51PM 13 THE COURT: WHAT ABOUT 59, MR. LEACH?

12:51PM 14 MR. LEACH: 59 IS ANOTHER RESPONSE BY MR. BALWANI
12:51PM 15 HIMSELF TO QUESTIONS POSED TO HIM IN THE PFM LITIGATION.

12:51PM 16 I'VE BEEN UNABLE TO LOCATE MR. BALWANI'S ACTUAL
12:52PM 17 VERIFICATION FOR THIS DOCUMENT, BUT IT'S SIGNED BY HIS LAWYERS
12:52PM 18 IN THE COURSE OF VERY SERIOUS LITIGATION, AND I THINK THESE,
12:52PM 19 THESE ARE MR. BALWANI'S PERSONAL RESPONSES TO QUESTIONS.

12:52PM 20 IT'S NOT -- DEPENDING ON HOW THE TESTIMONY DEVELOPS, I
12:52PM 21 DON'T REALLY FORESEE OFFERING ANY PORTION OF 59, BUT IT -- FOR
12:52PM 22 ALL OF THE REASONS THAT 58 IS ADMISSIBLE, 59 WOULD BE EQUALLY
12:52PM 23 ADMISSIBLE.

12:52PM 24 THE COURT: IS THERE AN AGENCY THEORY THAT YOU'RE
12:52PM 25 SUGGESTING, AND HOW DO YOU -- IN REGARDS TO THE LAWYERS, FOR

1 FOUNDATIONAL PURPOSES, AND HOW DOES THAT GET ESTABLISHED?

2 MR. LEACH: THESE ARE LAWYERS FROM MR. COOPERSMITH'S
3 FORMER LAW FIRM WHO ARE PREPARING THESE INTERROGATORIES. THEY
4 SAY ON THEM, "WE REPRESENT MR. BALWANI."

5 MR. GROSSMAN WAS ALSO --

6 THE COURT: THAT'S MY QUESTION. HOW DO WE KNOW WHO
7 THESE LAWYERS ARE AND THEIR CONNECTION TO MR. BALWANI?

8 MR. LEACH: I MEAN, MR. GROSSMAN WAS ALSO ASKED
9 QUESTIONS BY MR. BALWANI'S LAWYERS IN THIS CASE.

10 I THINK HE CAN SAY WE -- I WANT TO BE CAREFUL, BECAUSE I
11 DON'T WANT TO INJECT GRATUITOUSLY DETAILS OF THAT LAWSUIT FOR
12 OTHER REASONS THAT I THOUGHT THE DEFENDANT WOULD OBJECT TO.

13 BUT MR. GROSSMAN IS FAMILIAR WITH THE LITIGATION. HE
14 KNOWS HE SUED MR. BALWANI. HE KNOWS MR. BALWANI HAS HAD
15 LAWYERS IN THAT CASE. HE KNOWS HE DIRECTED HIS LAWYERS TO
16 PROPOUND QUESTIONS TO MR. BALWANI'S TEAM, AND HE KNOWS HE GOT
17 RESPONSES.

18 AND THE LAWYERS THAT ARE LISTED IN 58 ARE THE SAME LAWYERS
19 WHO ARE LISTED IN 59, OR IN 59.

20 SO I DON'T THINK THERE'S A -- I THINK THE GOVERNMENT HAS
21 SATISFIED ANY FOUNDATION FOR AGENCY.

22 THE COURT: OKAY. THANK YOU.

23 AND IS THE -- WHAT IS THE STATUS OF THAT LITIGATION THAT
24 THESE INTERROGATORIES ARE RELATED TO?

25 MR. LEACH: IT WAS RESOLVED SEVERAL YEARS AGO.

12:53PM 1 THE COURT: OKAY. OKAY.

12:54PM 2 IS THAT IN ANY WAY GOING TO COME UP IN THIS CASE?

12:54PM 3 MR. LEACH: IT IS NOT MY INTENTION TO MAKE -- I WANT
12:54PM 4 TO DO THIS IN AS GENERIC A WAY AS POSSIBLE. IT WAS NOT MY
12:54PM 5 INTENTION TO REFER TO IT AS A LAWSUIT.

12:54PM 6 IT WAS TO DO IT, WAS THERE AN OCCASION WHEN MR. BALWANI
12:54PM 7 PROVIDED SWORN ANSWERS TO QUESTIONS THAT YOU HAD? TO TRY TO DO
12:54PM 8 IT THAT WAY.

12:54PM 9 SO I HAVE NO INTENTION OF GETTING INTO THE SUBSTANCE OF
12:54PM 10 THE LAWSUIT OR THE RESOLUTION OF THAT LAWSUIT.

12:54PM 11 I CAN IMAGINE SCENARIOS WHERE THE DEFENSE OPENS THE DOOR
12:54PM 12 TO WHAT HAPPENED IN THAT LAWSUIT, BUT I, I -- IT'S NOT THE
12:54PM 13 GOVERNMENT'S INTENTION, NOR DID THE GOVERNMENT DO THIS IN THE
12:54PM 14 HOLMES CASE, TO GET INTO THE SUBSTANCE OF THE CASE.

12:54PM 15 THE COURT: OKAY.

12:54PM 16 MS. WALSH.

12:54PM 17 MS. WALSH: THANK YOU, YOUR HONOR.

12:54PM 18 SO I DON'T -- ON THE COPY I HAVE OF 5858, THERE'S NO
12:54PM 19 SIGNATURE BY MR. BALWANI, SO I DON'T SEE WHERE HE SWEARS OR
12:55PM 20 SIGNS ANYTHING, NOR WITH 5859. THEY'RE JUST TYPED NAMES WITH
12:55PM 21 TWO SLASHES AND AN S ABOVE HIS ATTORNEYS' NAMES.

12:55PM 22 SO I DON'T THINK THIS IS A SWORN STATEMENT BY MR. BALWANI,
12:55PM 23 AND I DO THINK A FOUNDATION WOULD HAVE TO BE LAID, A TIGHTER
12:55PM 24 FOUNDATION FROM THE AGENTS SAYING WE WERE ACTING ON
12:55PM 25 MR. BALWANI'S BEHALF IN THIS LAWSUIT.

12:55PM 1 SO THAT GOES TO IS THIS A SWORN STATEMENT BY MR. BALWANI.

12:55PM 2 IN ADDITION, I THINK THERE'S A REAL 403 ISSUE HERE. WE'RE
12:55PM 3 GOING TO IMPORT ALLEGATIONS AND ANSWERS TO INTERROGATORIES FROM
12:55PM 4 A CIVIL LAWSUIT BROUGHT BY THIS WITNESS AND THAT REALLY ARE NOT
12:55PM 5 NECESSARY IN THIS CASE. IT'S GOING TO CAUSE CONFUSION FOR THE
12:56PM 6 JURY, I THINK.

12:56PM 7 THE JURORS, THE JURORS MAY SAY OR THINK, WELL, IF PFM SUED
12:56PM 8 MR. BALWANI, THEN THERE MUST BE SOMETHING THERE, AND THEY'RE
12:56PM 9 GOING TO WONDER WHAT HAPPENED TO THE LAWSUIT, HOW IT WAS
12:56PM 10 RESOLVED, DID MR. GROSSMAN GET HIS MONEY BACK.

12:56PM 11 THERE ARE ALL KINDS OF QUESTIONS THAT THIS IS GOING TO
12:56PM 12 TRIGGER IN THE JURORS' MINDS, AND THEY MAY START SPECULATING
12:56PM 13 ABOUT WHAT THE RESULT OF THAT LAWSUIT WAS.

12:56PM 14 I THINK IT'S TOTALLY INAPPROPRIATE TO BRING THIS EVIDENCE
12:56PM 15 IN FRONT OF THE JURY.

12:56PM 16 THE COURT: ONE OF THOSE THINGS THAT THEY COULD
12:56PM 17 SPECULATE ON WOULD BE THE BIAS OF THE WITNESS AS AGAINST YOUR
12:56PM 18 CLIENT AND THAT THEY SHOULD CONSIDER THAT BIAS WHEN THEY WEIGH
12:56PM 19 THE CREDIBILITY OF THE TESTIMONY.

12:56PM 20 MS. WALSH: SURE. BUT THAT WOULD BE DEFENSE
12:56PM 21 COUNSEL'S CHOICE TO BRING OUT THAT BIAS, AND WEIGHING THOSE TWO
12:56PM 22 THINGS, WE THINK IT'S MORE APPROPRIATE TO KEEP THE
12:56PM 23 INTERROGATORIES OUT OF THE CRIMINAL CASE.

12:56PM 24 THE COURT: OKAY.

12:57PM 25 MR. LEACH: THESE ARE SWORN STATEMENTS UNDER OATH IN

1 A SERIOUS LAWSUIT BROUGHT BY ONE OF THE INVESTORS IN THIS CASE.

2 I'M NOT SURE WHY THE DEFENDANT SHOULD BE EXCUSED FROM HIS
3 OWN WORDS SIMPLY BECAUSE IT CAME UP IN A LAWSUIT, AND I THINK
4 THERE ARE WAYS TO MANAGE THOSE 403 CONCERNS WITHOUT LEADING TO
5 THE PARADE OF HORRIBLES THAT MS. WALSH IS THINKING ABOUT.

6 WITH RESPECT TO THE VERIFICATION, I HAVE A MORE RECENT
7 COPY, WHICH I CAN PROVIDE TO THE DEFENSE, WHICH HAS THE
8 VERIFICATION. MY APOLOGIES WHAT I SENT LAST NIGHT LACKED THAT.

9 BUT THESE ARE HIS SWORN STATEMENTS IN A SUBSTANTIALLY
10 SIMILAR LAWSUIT. I -- WHATEVER CONCERNS THERE ARE ABOUT THE
11 JURY SPECULATING ABOUT WHAT HAPPENED THERE ARE OUTWEIGHED BY
12 THE PROBATIVE NATURE OF HIS SWORN STATEMENTS UNDER OATH.

13 THE COURT: SO, SO WHAT I HEAR YOU SAYING IS THAT
14 YOU DO NOT INTEND TO -- IF THEY'RE ADMITTED, PART OF YOUR
15 FOUNDATION IS NOT TO ASK MR. GROSSMAN ABOUT THE LITIGATION PER
16 SE?

17 MR. LEACH: NOT AT ALL, YOUR HONOR.

18 THE COURT: ISN'T IT A FACT THAT YOU SUED HIM, AND
19 IN RESPONSE TO THAT LAWSUIT, YOU GOT THIS? OR SOMETHING LIKE
20 THAT? YOU'RE NOT GOING TO DO THAT?

21 MR. LEACH: THAT IS NOT THE GOVERNMENT'S INTENT IN
22 THE DIRECT EXAMINATION. WE DID NOT DO THAT IN THE HOLMES CASE.

23 I DO -- YOU KNOW, I COULD IMAGINE A CROSS-EXAMINATION
24 WHERE THEY'RE FAULTING MR. GROSSMAN FOR NOT BRINGING AN ACTION
25 QUICKER.

12:58PM 1 I CAN MANAGE A CROSS-EXAMINATION OF MR. GROSSMAN WHERE
12:58PM 2 THEY'RE TALKING ABOUT ISSUES IN 2016 OR 2017 WHERE THEY MAY
12:58PM 3 OPEN THE DOOR TO WHAT HAPPENED IN THAT LAWSUIT OR BIAS, AS THE
12:58PM 4 GOVERNMENT, OR AS THE COURT HAS SUGGESTED.

12:58PM 5 BUT I DON'T INTEND TO TALK ABOUT THE FACT THAT THERE WAS A
12:58PM 6 LAWSUIT OR WHAT THE OUTCOME WAS OR WHAT THE ALLEGATIONS WERE.

12:58PM 7 I APPRECIATE THE 403 CONCERNS THERE.

12:58PM 8 THE COURT: AND IS THE CONVERSATION IN THE
12:58PM 9 INTERROGATORIES ABOUT THE CONDUCT THAT OCCURRED WITHIN THE
12:58PM 10 CHARGED PERIOD IN THE INDICTMENT?

12:59PM 11 MR. LEACH: YES, YOUR HONOR.

12:59PM 12 THE COURT: OKAY.

12:59PM 13 MS. WALSH: YOUR HONOR, IT WOULD BE HELPFUL TO
12:59PM 14 KNOW -- SO I TAKE IT THE ONLY INTERROGATORY ANSWER THAT HAS A
12:59PM 15 VERIFICATION IS 5858.

12:59PM 16 IS THAT CORRECT, MR. LEACH?

12:59PM 17 MR. LEACH: YES.

12:59PM 18 MS. WALSH: OKAY. AND IT WOULD BE HELPFUL TO KNOW
12:59PM 19 WHICH PARAGRAPH THE GOVERNMENT INTENDS TO OFFER, BECAUSE WE MAY
12:59PM 20 HAVE 106 ADDITIONS TO THOSE WHATEVER PARAGRAPHS.

12:59PM 21 MR. LEACH: DESCRIBE YOUR OWNERSHIP STAKE IN
12:59PM 22 THERANOS.

12:59PM 23 THE COURT: OKAY. LET ME JUST TELL YOU NOW, I
12:59PM 24 WOULD, OVER YOUR OBJECTION, ALLOW 5860, 5858 TO COME IN. THE
12:59PM 25 COURT FINDS THAT IF THEY ARE RELATED, AS YOU SUGGEST, TO

12:59PM 1 CONDUCT THAT OCCURRED DURING THE CHARGED PERIOD OF THE
12:59PM 2 INDICTMENT, THEY ARE STATEMENTS BY THE DEFENDANT IN THIS CASE
12:59PM 3 THAT RELATE TO THE CONDUCT THAT FALLS WITHIN THE CHARGED PERIOD
01:00PM 4 OF THE INDICTMENT. THOSE WOULD BE ADMITTED.

01:00PM 5 5859 I'M GOING TO RESERVE ON ABSENT ANOTHER FOUNDATION ON
01:00PM 6 THAT.

01:00PM 7 AND WHAT I'M GOING TO DO IS GIVE YOU A CHANCE TO MEET AND
01:00PM 8 CONFER FOR A MOMENT TO SHARE WITH YOU THE PAGES THAT YOU SEEK,
01:00PM 9 MR. LEACH, TO INTRODUCE. SHOW THAT PAGE, WHATEVER IT IS, AND
01:00PM 10 TO GIVE MS. WALSH AN OPPORTUNITY TO SUGGEST 106 OR WHATEVER
01:00PM 11 ELSE YOU WOULD LIKE.

01:00PM 12 MS. WALSH: SURE, YOUR HONOR.

01:00PM 13 AND COULD I JUST GET SOME CLARITY? I JUST WANT TO MAKE
01:00PM 14 SURE I UNDERSTAND THE COURT'S RULING.

01:00PM 15 5860 IS THE ENTIRETY OF THERANOS'S ANSWERS TO THE
01:00PM 16 INTERROGATORIES.

01:00PM 17 THE COURT: THAT'S NOT WHAT HE'S -- I THOUGHT
01:00PM 18 MR. LEACH SAID HE'S GOING TO ASK ONE QUESTION ABOUT THAT THAT
01:00PM 19 REFERENCES NUMBER 14, "I INCORPORATE MY ANSWERS IN 14," AND
01:00PM 20 THEN 14'S RESPONSE WOULD COME IN.

01:00PM 21 IS THAT WHAT YOU SAID, MR. LEACH?

01:00PM 22 MR. LEACH: I ONLY OFFERED -- I USED 14 AS AN
01:00PM 23 EXAMPLE. I DON'T HAVE EXACTLY WHICH ONE IN MIND.

01:01PM 24 BUT IT WOULD ONLY BE UNDER THE CIRCUMSTANCES WHERE
01:01PM 25 MR. BALWANI IS INCORPORATING THERANOS'S ANSWERS.

01:01PM 1 I WOULDN'T DO IT IN A CIRCUMSTANCE WHERE HE DIDN'T DO
01:01PM 2 THAT.

01:01PM 3 THE COURT: THE WHOLE DOCUMENT IS NOT COMING IN?

01:01PM 4 MR. LEACH: NO, NO, NO.

01:01PM 5 MS. WALSH: THAT'S WHAT I WONDERED.

01:01PM 6 THE COURT: RIGHT.

01:01PM 7 MS. WALSH: THERE IS ANOTHER DOCUMENT WE WANTED TO
01:01PM 8 RAISE WITH THE COURT IF THAT'S OKAY.

01:01PM 9 THE COURT: SURE.

01:01PM 10 MS. WALSH: THIS IS EXHIBIT 2984. IT APPEARS TO BE
01:01PM 11 NOTES THAT MR. GROSSMAN TOOK WHILE WATCHING AN INTERVIEW OF
01:01PM 12 MS. HOLMES, AND THEY ARE KIND OF BULLET POINTS.

01:01PM 13 I HAVE A COPY, YOUR HONOR. IF I COULD HAND IT UP?

01:01PM 14 THE COURT: SURE.

01:01PM 15 YOU HAVE THIS, MR. LEACH?

01:01PM 16 MR. LEACH: I DO.

01:01PM 17 MS. WALSH: SO IT LOOKS LIKE BULLET POINTS OF WHAT
01:01PM 18 HE IS HEARING FROM MS. HOLMES DURING THIS INTERVIEW, AND THEN
01:01PM 19 AT THE BOTTOM THERE ARE TWO PARAGRAPHS DESCRIBING HIS MENTAL
01:02PM 20 IMPRESSIONS OF HER PERFORMANCE AND HIS SPECULATION AS TO WHY
01:02PM 21 THE FDA DID A SURPRISE INSPECTION AND MAYBE WHAT THAT HAS TO DO
01:02PM 22 WITH THERANOS TECHNOLOGY.

01:02PM 23 THE DATE OF THIS IS OCTOBER 21ST, 2015.

01:02PM 24 I THINK ITS PROBATIVE VALUE, GIVEN IT'S HIS IMPRESSIONS OF
01:02PM 25 WHAT HE'S WATCHING AT THE TIME OF MS. HOLMES, NOT EVEN

01:02PM 1 MR. BALWANI, IT HAS LITTLE PROBATIVE VALUE.

01:02PM 2 THE LAST TWO PARAGRAPHS ARE COMPLETELY SPECULATIVE AND HIS
01:02PM 3 MENTAL IMPRESSIONS OF WHAT IS GOING ON.

01:02PM 4 AND I THINK THAT IN ADDITION, THESE IMPRESSIONS THAT HE'S
01:02PM 5 GIVING DID NOT INFORM HIS INVESTMENT DECISION SINCE HIS
01:02PM 6 INVESTMENT DECISION WAS MADE IN FEBRUARY 2014, MONTHS BEFORE
01:02PM 7 THIS INTERVIEW.

01:02PM 8 SO I THINK IT HAS CLOSE TO NO PROBATIVE VALUE, AND IT IS
01:03PM 9 PREJUDICIAL BECAUSE HE'S GIVING HIS OPINION ABOUT WHAT IS GOING
01:03PM 10 ON DURING HER INTERVIEW.

01:03PM 11 THE COURT: MR. LEACH.

01:03PM 12 MR. LEACH: THANK YOU, YOUR HONOR.

01:03PM 13 THIS IS THE FIRST TIME THAT I'M HEARING OF THE OBJECTIONS
01:03PM 14 TO THIS PARTICULAR DOCUMENT, SO I'LL JUST EXPLAIN WHY I THINK
01:03PM 15 THE GOVERNMENT MIGHT BE USING THIS.

01:03PM 16 IT'S NOT MY INTENT --

01:03PM 17 THE COURT: GO AHEAD. I THINK YOU'RE GOING TO THE
01:03PM 18 QUESTION THAT I WAS GOING TO ASK.

01:03PM 19 MR. LEACH: IT'S NOT MY INTENTION TO OFFER 2894
01:03PM 20 DURING THE DIRECT EXAMINATION.

01:03PM 21 THE COURT: OKAY.

01:03PM 22 MR. LEACH: I MAY CHOOSE TO ASK MR. GROSSMAN
01:03PM 23 QUESTIONS ABOUT OBSERVING THE INTERVIEW.

01:03PM 24 DEPENDING ON WHAT HE'S ABLE -- THAT HE OBSERVED OF
01:03PM 25 MS. HOLMES.

01:03PM 1 DEPENDING ON WHAT HE REMEMBERS OR DOESN'T REMEMBER, I MAY
01:03PM 2 USE 2804 TO REFRESH HIM.

01:03PM 3 THE REASON HIS OBSERVATIONS OF MS. HOLMES'S STATEMENT IN
01:03PM 4 OCTOBER 2015 ARE RELEVANT IS BECAUSE IN THE TEXT MESSAGES ON
01:03PM 5 THE SAME DAY, MS. HOLMES AND MR. BALWANI ARE TEXTING BACK AND
01:04PM 6 FORTH AND MR. BALWANI WRITES, "WORRIED ABOUT THE COMMENTS YOU
01:04PM 7 JUST MADE TO 'THE WALL STREET JOURNAL.'"

01:04PM 8 THIS IS RELEVANT, EVEN AFTER THE INVESTMENT DECISION, NOT
01:04PM 9 FOR MR. GROSSMAN'S STATE OF MIND, BUT TO THE DEFENDANT'S STATE
01:04PM 10 OF MIND WHEN HE SEES HIS COCONSPIRATOR MAKING A PUBLIC
01:04PM 11 STATEMENT IN THE FACE OF PUBLIC ALLEGATIONS, AND HE SAYS
01:04PM 12 ESSENTIALLY, I'M WORRIED ABOUT WHAT YOU JUST SAID.

01:04PM 13 THE COURT: THANK YOU.

01:04PM 14 THAT, THAT, THE TEXT MESSAGES, AND I RECALL THAT TEXT
01:04PM 15 MESSAGE, FOR PURPOSES OF THE COURT TRYING TO MAINTAIN AND VIEW
01:04PM 16 WHETHER OR NOT A PRIMA FACIE CASE HAS BEEN SHOWN OF CONSPIRACY
01:04PM 17 SUCH THAT IT WOULD INVOKE OTHER EVIDENTIARY RULINGS AS TO
01:04PM 18 ADMISSION OF COCONSPIRATOR STATEMENTS, ET CETERA, THAT
01:04PM 19 FOUNDATION THAT MR. LEACH SUGGESTS HERE, IF IT WAS -- AND I'M
01:04PM 20 TAKING YOUR WORD ON IT -- IF IT WAS THE SAME DAY AS THE
01:05PM 21 INTERVIEW, THAT WOULD SEEM TO SUPPORT AT LEAST A PRIMA FACIE
01:05PM 22 CONVERSATION THAT MIGHT BE IN FURTHERANCE OF AT THAT TIME,
01:05PM 23 WHICH WOULD ALLOW FOR -- I'M NOT SUGGESTING THE DOCUMENT COMES
01:05PM 24 IN, AND I'M, I'M RELIEVED TO HEAR MR. LEACH IS NOT SEEKING TO
01:05PM 25 INTRODUCE THE DOCUMENT.

01:05PM 1 BUT PROBING QUESTIONS ABOUT MR. GROSSMAN'S OPINIONS ABOUT
01:05PM 2 WHAT HE OBSERVED FROM THE CODEFENDANT, SEVERED CODEFENDANT HAS
01:05PM 3 SOME RELEVANCE IN REGARDS TO, AS MR. LEACH SAID, AND I'M HAPPY
01:05PM 4 TO HEAR YOUR COMMENT ON THIS, AS MR. LEACH SAID, THE TEXTING
01:05PM 5 THAT WAS CONCURRENT WITH THE INTERVIEW, WHICH SEEMS TO SUGGEST,
01:05PM 6 AT LEAST PRIMA FACIE, CONSPIRACY.

01:05PM 7 SO I'M HAPPY TO HEAR FROM YOU ON THAT.

01:05PM 8 MS. WALSH: YEAH. SO ON THE TEXTS, I UNDERSTAND
01:06PM 9 THAT THE TEXTS ARE IN, AND MR. LEACH CAN READ THOSE TEXTS AND
01:06PM 10 THEY SAY WHAT THEY SAY.

01:06PM 11 BUT JUST BECAUSE MR. BALWANI IS SAYING TO MS. HOLMES, "I'M
01:06PM 12 CONCERNED ABOUT WHAT YOU'RE SAYING OR WHAT YOU SAID," I DON'T
01:06PM 13 SEE HOW THAT MAKES MR. GROSSMAN'S SUBJECTIVE OPINIONS ABOUT
01:06PM 14 WHAT SHE SAID LONG AFTER HE INVESTED RELEVANT AT ALL.

01:06PM 15 I DON'T UNDERSTAND THE CONNECTION AND HOW THE TEXTS
01:06PM 16 SOMEHOW GIVE MR. GROSSMAN'S SUBJECTIVE IMPRESSIONS RELEVANCE.
01:06PM 17 THEY'RE COMPLETELY SEPARATE.

01:06PM 18 THE COURT: SO HE STILL HAD HIS INVESTMENT AT THE
01:06PM 19 TIME OF THE INTERVIEW. THEY HAD INVESTED?

01:06PM 20 MS. WALSH: HE DID STILL HAVE HIS INVESTMENT, YEAH.

01:06PM 21 THE COURT: THEY WERE INVESTORS IN THE COMPANY, SO
01:06PM 22 THE COMPANY HAD THEIR FUNDS.

01:06PM 23 MS. WALSH: RIGHT. BUT THEY HAD MADE THE INVESTMENT
01:06PM 24 MANY YEARS BEFORE.

01:06PM 25 AND I DON'T THINK MR. LEACH IS GOING BEYOND THE INVESTMENT

01:06PM 1 AS FAR AS OTHER CONVERSATIONS THAT MR. GROSSMAN AND MR. BALWANI
01:07PM 2 HAD BECAUSE I THINK THAT THERE'S A RELEVANCE ISSUE WITH THEM.

01:07PM 3 AND THIS ESPECIALLY IS JUST -- MR. GROSSMAN WATCHING
01:07PM 4 MS. HOLMES ON T.V. AND GIVING HIS RANDOM IMPRESSIONS ABOUT HER
01:07PM 5 PERFORMANCE, I JUST DON'T SEE THE PROBATIVE VALUE OF IT.

01:07PM 6 THE COURT: MR. LEACH.

01:07PM 7 MR. LEACH: FIRST OF ALL, I AGREE WITH THE DEFENSE
01:07PM 8 THAT STATEMENTS -- CONVERSATIONS BETWEEN MR. BALWANI AND
01:07PM 9 MR. GROSSMAN ARE NOT RELEVANT EXCEPT TO THE EXTENT THAT THEY
01:07PM 10 ILLUMINATE MR. BALWANI'S STATE OF MIND. I THINK HIS STATE OF
01:07PM 11 MIND THROUGHOUT THE CONSPIRACY IS RELEVANT.

01:07PM 12 I WANT TO BE CLEAR ABOUT WHAT THE GOVERNMENT INTENDS TO DO
01:07PM 13 HERE. I DON'T INTEND TO ASK MR. GROSSMAN ABOUT HIS IMPRESSIONS
01:07PM 14 OF MS. HOLMES OR WHETHER HE THOUGHT SHE WAS CREDIBLE OR WHAT
01:07PM 15 HIS OVERALL TAKEAWAY WAS.

01:07PM 16 I INTEND TO ASK, DOES HE REMEMBER WHAT MS. HOLMES SAID?
01:07PM 17 DOES HE REMEMBER MS. HOLMES SAYING WE NEVER USED COMMERCIALY
01:07PM 18 BASED LAB EQUIPMENT FOR FINGERSTICK SAMPLES?

01:08PM 19 AND THEN IN CLOSING ARGUMENT WE CAN COMPARE THIS WITNESS'S
01:08PM 20 MEMORY OF WHAT MS. HOLMES SAID IS AGAINST THE TEXT MESSAGE AND
01:08PM 21 SEE MR. BALWANI'S REACTION TO THAT.

01:08PM 22 IT'S NO GREATER THAN THAT. I DON'T INTEND TO GET INTO
01:08PM 23 MENTAL IMPRESSIONS OR THOUGHTS ABOUT CREDIBILITY OR ANYTHING
01:08PM 24 REFLECTED IN THAT NOTE.

01:08PM 25 IT'S REALLY, DID YOU OBSERVE MS. HOLMES SAY X?

01:08PM 1 YES.

01:08PM 2 AND WE KNOW FROM THE TEXT MESSAGES THAT THAT CAUSED

01:08PM 3 MR. BALWANI SOME HEARTBURN.

01:08PM 4 AND THAT'S CLEARLY RELEVANT TO HIS STATE OF MIND AND THE

01:08PM 5 EXISTENCE OF A CONSPIRACY.

01:08PM 6 MS. WALSH: BUT, YOUR HONOR, WE ALREADY KNOW FROM

01:08PM 7 THE TEXT MESSAGES THAT IT MAY HAVE CAUSED HEARTBURN.

01:08PM 8 WE DON'T NEED MR. GROSSMAN'S GLOSS -- HIS OWN PERSONAL

01:08PM 9 GLOSS THAT WAS NEVER COMMUNICATED TO MR. BALWANI, BY THE WAY --

01:08PM 10 BASED ON HIS OWN THOUGHTS AS TO WHAT MS. HOLMES SAID.

01:08PM 11 I DON'T SEE HOW THERE'S REAL PROBATIVE VALUE IN HIM

01:08PM 12 TESTIFYING TO THAT.

01:09PM 13 THE COURT: OKAY. AS FAR AS THE TIME CONSUMPTION

01:09PM 14 UNDER 403 ANALYSIS, WHAT IS THAT GOING TO BE, MR. LEACH?

01:09PM 15 MR. LEACH: I DON'T FORESEE THIS TAKING MORE THAN

01:09PM 16 FIVE MINUTES OF EXAMINATION, YOUR HONOR.

01:09PM 17 AND HONESTLY, I'M, I'M STILL WEIGHING WHETHER WE WILL BE

01:09PM 18 GETTING INTO THIS PERIOD AT ALL. BUT IF IT TAKES UP ANY

01:09PM 19 PORTION OF THE DIRECT, IT WILL BE LESS THAN FIVE MINUTES.

01:09PM 20 THE COURT: IT WILL CERTAINLY BE LESS THAN THE TIME

01:09PM 21 THAT WE HAVE SPENT DISCUSSING IT.

01:09PM 22 MR. LEACH: YES.

01:09PM 23 THE COURT: OKAY.

01:09PM 24 MS. WALSH: IF I COULD INQUIRE, YOUR HONOR, IN

01:09PM 25 ADDITION, IF MR. LEACH HAS SOME ESTIMATE ON HIS DIRECT? THAT

01:09PM 1 MIGHT BE HELPFUL IN PLANNING.

01:09PM 2 THE COURT: ANY IDEA ON THAT, MR. LEACH?

01:09PM 3 MR. LEACH: AS THE COURT MAY TELL FROM SOME OF MY
01:09PM 4 RESPONSES TO THE QUESTIONS, I'M NOT EXACTLY SURE. I THINK IN
01:09PM 5 THE HOLMES CASE IT WAS ABOUT TWO AND A HALF HOURS, AND MY GOAL
01:09PM 6 IS TO COME IN SOONER ON THAT.

01:09PM 7 THE COURT: OKAY.

01:09PM 8 MR. LEACH: SO TWO HOURS IS WHAT I CAN GUESS.

01:10PM 9 THE COURT: OKAY.

01:10PM 10 MS. WALSH: OKAY. THANK YOU.

01:10PM 11 THE COURT: YOU SHOULD PROBABLY GET AN ANSWER FROM
01:10PM 12 ME ABOUT THIS.

01:10PM 13 MS. WALSH: YES, YES.

01:10PM 14 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

01:10PM 15 MS. WALSH: YES, YOUR HONOR.

01:10PM 16 THE COURT: SO I WILL PERMIT -- FIRST OF ALL, I'M
01:10PM 17 NOT GOING TO ALLOW 2894 TO BE ADMITTED INTO EVIDENCE.

01:10PM 18 BUT I WILL PERMIT YOU, MR. LEACH, TO ASK QUESTIONS OF THE
01:10PM 19 WITNESS, DID MS. HOLMES SAY X?

01:10PM 20 BUT NOT TO DRAW UPON HIS OPINION AS TO CREDIBILITY OR ANY
01:10PM 21 OF THOSE THINGS, HOW IS SHE DOING, OR TO RATE HER PERFORMANCE
01:10PM 22 OR ANYTHING LIKE THAT. DID YOU BELIEVE HER? THAT'S NOT
01:10PM 23 RELEVANT.

01:10PM 24 BUT WHAT WOULD BE AND COULD BE RELEVANT IS HIS ABILITY TO
01:10PM 25 RECALL WHAT SHE SAID REGARDING, HER REPRESENTATIONS REGARDING

01:10PM 1 THE COMPANY.

01:11PM 2 AND AS WE HAVE SAID, THE CONNECTION TO MR. BALWANI IS THE
01:11PM 3 TEXT MESSAGE. IN THIS CASE IT SEEMS LIKE IT WAS ON THE SAME
01:11PM 4 DATE OF THE ARTICLE.

01:11PM 5 SO I'LL PERMIT THAT TO COME IN.

01:11PM 6 IF IT BECOMES CUMULATIVE, IF IT GOES TOO FAR, I'LL
01:11PM 7 CERTAINLY HEAR FROM THE PARTIES ABOUT THAT.

01:11PM 8 OKAY. THERE WAS ANOTHER THING?

01:11PM 9 MS. WALSH: THERE WAS. THIS RELATES TO SCHEDULING.

01:11PM 10 THE COURT: YES.

01:11PM 11 MS. WALSH: SO I KNOW THAT THE GOVERNMENT'S MOTION
01:11PM 12 RELATED TO THE LIS IS FOR FRIDAY MORNING.

01:11PM 13 THE COURT: YES.

01:11PM 14 MS. WALSH: AND WE WANT TO REQUEST THAT THAT BE
01:11PM 15 PUSHED TO MONDAY. WE DON'T ANTICIPATE CALLING THE EXPERT THAT
01:11PM 16 WOULD BE THE SUBJECT OF THAT MOTION. WE WOULD LIKE A LITTLE
01:11PM 17 MORE TIME TO DIGEST WHAT THE GOVERNMENT SAID AND RESPOND TO IT,
01:11PM 18 AND WE CAN BE PREPARED TO ADDRESS IT ON MONDAY MORNING.

01:11PM 19 THE COURT: I'M SORRY, YOU DON'T INTEND TO CALL?

01:11PM 20 MS. WALSH: RICHARD SONNIER.

01:12PM 21 THE COURT: IN YOUR DEFENSE?

01:12PM 22 MS. WALSH: NO, ON FRIDAY. FRIDAY. I WAS UNCLEAR.

01:12PM 23 THE COURT: THANK YOU.

01:12PM 24 MS. WALSH: WE HAD ORIGINALLY INDICATED THAT WE
01:12PM 25 MIGHT, AND WE DO NOT INTEND TO DO THAT.

01:12PM 1 THE COURT: OKAY.

01:12PM 2 MS. WALSH: SO IT DOESN'T NEED TO BE DECIDED BEFORE

01:12PM 3 FRIDAY.

01:12PM 4 AND IF THE GOVERNMENT RESTS, WE WILL HAVE AT LEAST TWO

01:12PM 5 WITNESSES THAT WE -- I MEAN, WE HAVEN'T DECIDED FINALLY --

01:12PM 6 THE COURT: SURE.

01:12PM 7 MS. WALSH: -- BUT THAT WE ARE CONTEMPLATING, SO WE

01:12PM 8 CAN BE PREPARED TO GO ON THAT.

01:12PM 9 THE COURT: THANK YOU.

01:12PM 10 WELL, I'D LIKE TO KEEP IT AT 8:30 ON FRIDAY. I KNOW WE

01:12PM 11 HAD YESTERDAY A FULL DAY TO -- I'M SURE WE ALL BENEFITTED FROM

01:12PM 12 THE BREAK. AND I THINK MR. COOPERSMITH WANTED -- RATHER THAN

01:12PM 13 PRESS ON, WE TOOK A BREAK AND WAITED FOR THE HEALTH OF THE

01:12PM 14 JUROR TO IMPROVE, WHICH IT HAD. I'M GLAD HE'S BACK WITH US

01:12PM 15 TODAY.

01:12PM 16 BUT I'D LIKE TO KEEP US ON SCHEDULE FOR THE 8:30 FOR THAT,

01:12PM 17 AT LEAST OUR INITIAL HEARING. HOPEFULLY WE CAN RESOLVE IT

01:13PM 18 THEN.

01:13PM 19 IF NOT, WE CERTAINLY CAN BEGIN THE DISCUSSION.

01:13PM 20 MS. WALSH: SURE.

01:13PM 21 THE COURT: ALL RIGHT.

01:13PM 22 MS. WALSH: ALL RIGHT.

01:13PM 23 THE COURT: LET'S TAKE ABOUT FIVE MINUTES AND WE'LL

01:13PM 24 COME BACK AND MR. GROSSMAN WILL BE HERE.

01:13PM 25 MR. LEACH: OKAY.

01:13PM 1 (RECESS FROM 1:13 P.M. UNTIL 1:23 P.M.)

01:23PM 2 THE COURT: ALL RIGHT. THANK YOU FOR YOUR PATIENCE,

01:23PM 3 LADIES AND GENTLEMEN.

01:23PM 4 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT

01:23PM 5 ARE PRESENT ONCE AGAIN.

01:24PM 6 MR. LEACH.

01:24PM 7 MR. LEACH: THANK YOU, YOUR HONOR.

01:24PM 8 THE UNITED STATES CALLS BRIAN GROSSMAN.

01:24PM 9 THE COURT: SIR, IF YOU WOULD COME HERE AND FACE OUR

01:24PM 10 COURTROOM DEPUTY AND RAISE YOUR RIGHT HAND, SHE HAS A QUESTION

01:24PM 11 FOR YOU.

01:24PM 12 **(GOVERNMENT'S WITNESS, BRIAN GROSSMAN, WAS SWORN.)**

01:24PM 13 THE WITNESS: I DO.

01:24PM 14 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR. MAKE

01:24PM 15 YOURSELF COMFORTABLE.

01:24PM 16 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

01:24PM 17 NEED.

01:24PM 18 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

01:24PM 19 AND THEN SPELL IT, PLEASE.

01:24PM 20 THE WITNESS: DO I NEED TO KEEP MY MASK ON?

01:24PM 21 THE COURT: ARE YOU FULLY VACCINATED?

01:24PM 22 THE WITNESS: YES. THAT'S OKAY.

01:24PM 23 THE COURT: NO, GO AHEAD AND TAKE IT OFF. THAT'S

01:24PM 24 FINE.

01:25PM 25 THE WITNESS: BRIAN GROSSMAN. B-R-I-A-N,

01:25PM 1 G-R-O-S-S-M-A-N.

01:25PM 2 THE COURT: COUNSEL.

01:25PM 3 MR. LEACH: THANK YOU, YOUR HONOR.

01:25PM 4 **DIRECT EXAMINATION**

01:25PM 5 BY MR. LEACH:

01:25PM 6 Q. GOOD AFTERNOON, MR. GROSSMAN.

01:25PM 7 A. GOOD AFTERNOON.

01:25PM 8 Q. WHERE DO YOU WORK?

01:25PM 9 A. I WORK FOR A FIRM CALLED PFM HEALTH SCIENCES.

01:25PM 10 Q. AND WHAT IS PFM HEALTH SCIENCES?

01:25PM 11 A. WE ARE AN S.E.C. REGISTERED INVESTMENT ADVISOR.

01:25PM 12 WE HAVE THREE DIFFERENT FUNDS. WE HAVE A HEDGE FUND; WE
01:25PM 13 HAVE A LONG ONLY FUND; AND WE HAVE A PRIVATE, A FUND INVESTING
01:25PM 14 IN PRIVATE COMPANIES.

01:25PM 15 Q. AND WHEN YOU SAY S.E.C. REGISTERED INVESTMENT ADVISOR,
01:25PM 16 S.E.C. IS THE U.S. SECURITIES AND EXCHANGE COMMISSION?

01:25PM 17 A. YES.

01:25PM 18 Q. THAT'S THE GOVERNMENT AGENCY THAT REGULATES SECURITIES?

01:26PM 19 A. THAT'S CORRECT.

01:26PM 20 Q. OKAY. AND WHAT IS A REGISTERED INVESTMENT ADVISOR?

01:26PM 21 A. WE, AS PART OF -- I'M NOT A LEGAL EXPERT ON THE PROCESS,
01:26PM 22 BUT OVER A CERTAIN ASSET SIZE, YOU'RE REQUIRED TO COMPLY WITH
01:26PM 23 S.E.C. REGULATIONS, FILE QUARTERLY STATEMENTS OF OWNERSHIP,
01:26PM 24 SECURITIES THAT YOU OWN, AND AS PART OF THAT, YOU'RE AUDITED BY
01:26PM 25 THE S.E.C. FROM TIME TO TIME, AND THEY GO THROUGH YOUR BOOKS

01:26PM 1 AND RECORDS.

01:26PM 2 AND SO WE HAVE BEEN AN S.E.C. REGISTERED INVESTMENT

01:26PM 3 ADVISOR I THINK SINCE THE MIDDLE OF THE LAST DECADE. SO 2005

01:26PM 4 OR '06, SOMEWHERE IN THAT.

01:26PM 5 Q. AND THE ADVISOR YOU WORK FOR IS PARTNERSHIP FUND

01:26PM 6 MANAGEMENT?

01:26PM 7 A. YEAH, PFM HEALTH SCIENCES.

01:26PM 8 Q. AND WHAT DO YOU DO FOR PFM HEALTH SCIENCES?

01:26PM 9 A. I'M THE MANAGING PARTNER. I ALSO AM THE PORTFOLIO MANAGER

01:26PM 10 FOR ALL OF THE FUNDS.

01:26PM 11 Q. IN OR ABOUT FEBRUARY OF 2014, DID PFM INVEST IN A COMPANY

01:27PM 12 CALLED THERANOS?

01:27PM 13 A. YES.

01:27PM 14 Q. I HAVE SOME QUESTIONS ABOUT THAT, BUT FIRST LET ME ASK YOU

01:27PM 15 TO PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

01:27PM 16 A. MY -- I WENT -- I WENT -- I ATTENDED COLLEGE IN THE

01:27PM 17 UNIVERSITY OF PENNSYLVANIA. I GRADUATED IN 1996 WITH A DEGREE,

01:27PM 18 WITH A DEGREE -- A BACHELOR OF SCIENCE IN ECONOMICS.

01:27PM 19 FROM THERE I STARTED WORKING ORIGINALLY AT JP MORGAN. I

01:27PM 20 WORKED AT JP MORGAN ASSET MANAGEMENT FOR FIVE YEARS, FROM 1996

01:27PM 21 UNTIL 2001.

01:27PM 22 IN 2001 I LEFT JP MORGAN FOR A FIRM CALLED PEQUOT. IT WAS

01:27PM 23 ACTUALLY A HEDGE FUND.

01:27PM 24 AND THEN PEQUOT, WITHIN A FEW MONTHS, SPLIT INTO TWO

01:27PM 25 FIRMS.

01:27PM 1 I LEFT PEQUOT AS PART OF THE GROUP THAT STARTED ANOTHER
01:28PM 2 FIRM CALLED ANDOR CAPITAL. I WAS AT ANDOR CAPITAL FROM '01 TO
01:28PM 3 2004.

01:28PM 4 AND THEN SINCE 2004 I'VE BEEN AT PARTNERSHIP FUND
01:28PM 5 MANAGEMENT, OR PFM HEALTH SCIENCES AS WE NOW CALL IT.

01:28PM 6 Q. SO YOU'VE BEEN AT PFM SINCE APPROXIMATELY 2004?

01:28PM 7 A. THAT'S CORRECT.

01:28PM 8 Q. OKAY. SO ROUGHLY 18 YEARS?

01:28PM 9 A. YES.

01:28PM 10 Q. CAN YOU GIVE US A SENSE AT A HIGH LEVEL OF WHO SOME OF
01:28PM 11 PFM'S INVESTORS ARE?

01:28PM 12 A. WE HAVE A VARIETY OF INVESTORS FROM INDIVIDUALS ALL OF THE
01:28PM 13 WAY UP TO LARGE, WELL, HIGH NET WORTH INVESTORS. WE HAVE
01:28PM 14 INDIVIDUALS; WE HAVE CORPORATE PENSION PLANS; WE HAVE SOVEREIGN
01:28PM 15 GOVERNMENT PENSION PROGRAMS; AND WE HAVE STATE PENSION
01:28PM 16 PROGRAMS, ALL AS INVESTORS IN PFM.

01:29PM 17 Q. SO STATE PENSION PROGRAMS, WHAT ARE THOSE?

01:29PM 18 A. THOSE WOULD BE LIKE THE STATE OF CALIFORNIA, THE STATE OF
01:29PM 19 TEXAS, THE STATE OF UTAH THAT TAKE THEIR EMPLOYEE RETIREMENT
01:29PM 20 ASSETS AND HIRE DIFFERENT MANAGERS TO INVEST PART OF THAT --
01:29PM 21 PART OF THOSE RETIREMENT SAVINGS.

01:29PM 22 AND SO WE, WE HAVE -- WE -- OVER THE YEARS WE'VE HAD
01:29PM 23 RELATIONSHIPS WITH A NUMBER OF DIFFERENT STATES AS PART OF A --
01:29PM 24 WE WOULD BE ONE OF THEIR EXTERNAL INVESTMENT MANAGERS IS HOW
01:29PM 25 THEY WOULD DESCRIBE IT.

01:29PM 1 Q. AND DID I HEAR YOU SAY YOU ALSO INVEST MONEY ON BEHALF OF
01:29PM 2 CORPORATE PENSION FUNDS?

01:29PM 3 A. WE HAVE -- YEAH, WE HAVE CORPORATE PENSION PLANS; WE HAVE
01:29PM 4 HIGH NET WORTH INDIVIDUALS; WE HAVE FIRMS THAT REPRESENT A
01:29PM 5 SERIES OF HIGH NET WORTH FAMILIES, WHAT WE WOULD CALL
01:29PM 6 MULTI-FAMILY OFFICES; AND THEN OUR OWN EMPLOYEES ACTUALLY MAKE
01:30PM 7 UP A FAIR -- A SIGNIFICANT PART OF THE CAPITAL THAT WE INVEST.

01:30PM 8 Q. AND YOU HAVE A HAND IN INVESTING ON BEHALF OF PFM?

01:30PM 9 A. YES.

01:30PM 10 Q. AND WHAT IS YOUR ROLE?

01:30PM 11 A. MY ROLE IS, AS I SAID BEFORE, THE PORTFOLIO MANAGER. I'M
01:30PM 12 THE FINAL DECISION IN TERMS OF WHAT GOES INTO THE FUND, WHAT
01:30PM 13 GOES OUT OF THE FUND.

01:30PM 14 WE HAVE A COLLABORATIVE INVESTMENT PROCESS, SO WE HAVE
01:30PM 15 SENIOR AND JUNIOR INVESTMENT PROFESSIONALS THAT ARE INVOLVED IN
01:30PM 16 BOTH THE RESEARCH AND THEN ULTIMATELY HELP ADVISE DECISION
01:30PM 17 MAKING, INVESTMENT DECISIONS.

01:30PM 18 BUT AT THE END OF THE DAY, I'M THE FINAL DECISION-MAKER
01:30PM 19 FOR THE PORTFOLIO.

01:30PM 20 AND I'M ALSO IN CHARGE OF RISK MANAGEMENT, MANAGING THE
01:30PM 21 FUND. YOU KNOW, WHEN MARKET ENVIRONMENTS AREN'T AS -- OR CAN
01:30PM 22 BE A LITTLE TURBULENT, LIKE RIGHT NOW.

01:30PM 23 SO THOSE WOULD BE MY RESPONSIBILITIES.

01:31PM 24 I ALSO MANAGE THE FIRM, ALTHOUGH I HAVE A REALLY GOOD TEAM
01:31PM 25 THAT DOES MOST OF THE DAY-TO-DAY, MANAGES THE DAY-TO-DAY

01:31PM 1 OPERATIONS OF OUR INVESTMENT BUSINESS -- OR OF THE
01:31PM 2 NONINVESTMENT PART OF OUR FIRM.

01:31PM 3 SO I ALSO HAVE THOSE RESPONSIBILITIES, WHICH I DELEGATE
01:31PM 4 THE MAJORITY OF THAT.

01:31PM 5 Q. DOES PFM INVEST IN PUBLIC COMPANIES OR PRIVATE COMPANIES
01:31PM 6 OR SOME COMBINATION OF BOTH?

01:31PM 7 A. WE INVEST IN BOTH.

01:31PM 8 Q. OKAY. AND HOW DO YOU GO ABOUT DOING THAT?

01:31PM 9 A. WE HAVE A PROCESS FOR -- A RESEARCH PROCESS, AN INVESTMENT
01:31PM 10 PROCESS THAT WE HAVE DEVELOPED OVER THE LAST, YOU KNOW, TWO
01:31PM 11 DECADES GOING BACK TO EVEN THE PEQUOT PERIOD.

01:31PM 12 AND IT'S REALLY AROUND UNDERSTANDING THE FUNDAMENTAL
01:31PM 13 QUALITATIVE INSIGHTS AROUND A COMPANY, A PRODUCT, A TECHNOLOGY
01:31PM 14 AND HOW THAT'S LIKELY TO IMPACT SOME TYPE OF MARKET. MAYBE
01:32PM 15 IT'S FOR A DRUG, MAYBE IT'S FOR A NEW MEDICAL DEVICE, MAYBE
01:32PM 16 IT'S A NEW PIECE OF SOFTWARE FOR HOSPITALS.

01:32PM 17 WE THEN SPEND A LOT OF EFFORT TO TRANSLATE THOSE INSIGHTS
01:32PM 18 INTO AN ACTUAL FORECAST FOR THE BUSINESS, INCLUDING INCOME
01:32PM 19 STATEMENT, BALANCE SHEET, CASH FLOWS.

01:32PM 20 AND THEN WE TRY TO -- WE TRY TO, IN THAT TRANSLATION
01:32PM 21 PROCESS, WHEN WE QUANTIFY OUR INVESTMENT, WE TRY TO -- WE'RE
01:32PM 22 LOOKING FOR A VIEW OF THE BUSINESS THAT IS DIFFERENT, IN OTHER
01:32PM 23 WORDS, IT'S GOING TO GROW FASTER AND IT'S GOING TO BE MORE
01:32PM 24 PROFITABLE.

01:32PM 25 AND OFTENTIMES WE'LL LOOK OUT OVER MANY YEARS, 5, 10,

01:32PM 1 15 YEARS INTO THE FUTURE WHEN WE, WHEN WE DO THAT TYPE OF
01:32PM 2 ANALYSIS.

01:32PM 3 AND SO THAT'S, THAT'S OUR PROCESS.

01:32PM 4 AND WE INVEST IN THE HEALTH CARE SECTOR, ACROSS ALL OF THE
01:32PM 5 HEALTH CARE SECTOR, AND WE HAVE A TEAM OF PEOPLE THAT
01:32PM 6 SPECIALIZE IN DIFFERENT PARTS OF HEALTH CARE.

01:33PM 7 Q. LET ME PLEASE DIRECT YOUR ATTENTION, MR. GROSSMAN, TO THE
01:33PM 8 TIME PERIOD DECEMBER OF 2013.

01:33PM 9 DO YOU HAVE THAT TIME PERIOD IN MIND?

01:33PM 10 A. YES.

01:33PM 11 Q. IN OR AROUND THAT TIME PERIOD, DID YOU MEET WITH
01:33PM 12 INDIVIDUALS FROM THERANOS ABOUT A POSSIBLE INVESTMENT IN THE
01:33PM 13 COMPANY?

01:33PM 14 A. YES.

01:33PM 15 Q. WHO DID YOU MEET WITH?

01:33PM 16 A. WE MET WITH, WE MET WITH MS. HOLMES AND MR. BALWANI.

01:33PM 17 Q. OKAY. AND WHEN YOU SAY "WE," WHO ARE YOU TALKING ABOUT?

01:33PM 18 A. IT WAS MYSELF AND MY PARTNER AT THE TIME WHOSE NAME WAS
01:33PM 19 CHRISTOPHER JAMES. THE TWO OF US MET WITH MR. BALWANI AND
01:33PM 20 MS. HOLMES.

01:33PM 21 Q. WHERE DID YOU MEET WITH MS. HOLMES AND MR. BALWANI?

01:33PM 22 A. WE MET IN THEIR OFFICES IN PALO ALTO. I THINK IT WAS
01:33PM 23 CALIFORNIA AVENUE. AND, YEAH, THAT'S WHERE THE MEETING WAS.

01:33PM 24 Q. HOW DID THIS OPPORTUNITY COME ABOUT?

01:33PM 25 A. MY -- I DON'T -- I BELIEVE MY PARTNER HEARD ABOUT THE

01:34PM 1 COMPANY FROM ONE OF HIS FRIENDS OR ONE OF HIS INVESTMENTS, ONE
01:34PM 2 OF HIS FRIENDS IN THE INVESTMENT BUSINESS, AND AS A HEALTH CARE
01:34PM 3 FUND, OR SINCE OUR FIRM HAS A HEALTH CARE EXPERTISE, I THINK MY
01:34PM 4 PARTNER WAS ASKED IF HE KNEW ABOUT THE COMPANY.

01:34PM 5 AND THAT'S KIND OF WHEN IT FIRST SHOWED UP. THAT'S THE
01:34PM 6 FIRST TIME I REMEMBER HEARING ABOUT THE COMPANY.

01:34PM 7 Q. AND YOU MET WITH MR. BALWANI AND MS. HOLMES AT SOME POINT
01:34PM 8 IN DECEMBER OF 2013?

01:34PM 9 A. YES.

01:34PM 10 Q. OKAY. TELL US ABOUT THAT MEETING. WHAT HAPPENED?

01:34PM 11 A. WELL, WE -- WE DROVE, WE DROVE DOWN FROM SAN FRANCISCO TO
01:34PM 12 MEET WITH THEM.

01:34PM 13 WE REALLY -- I DIDN'T REALLY KNOW MUCH ABOUT THE COMPANY
01:34PM 14 OTHER THAN READING A FEW PRESS RELEASES THAT AT THAT POINT WERE
01:34PM 15 AVAILABLE.

01:34PM 16 SO I -- YOU KNOW, I HAD A VERY OPEN MIND. WE WERE GOING
01:34PM 17 DOWN THERE TO JUST SORT OF HEAR THE STORY.

01:35PM 18 I REMEMBER ARRIVING AT THE BUILDING, GOING THROUGH THE
01:35PM 19 SECURITY PROCESS TO KIND OF GET INTO THE LOBBY, THROUGH THE
01:35PM 20 LOBBY.

01:35PM 21 EVENTUALLY WE WERE USHERED THROUGH WHAT WAS A LOBBY AREA
01:35PM 22 INTO, YOU KNOW, PAST THE KITCHEN, PAST A WHOLE BUNCH OF PEOPLE
01:35PM 23 WORKING, INTO A CONFERENCE ROOM IN THE BACK OF THE BUILDING,
01:35PM 24 AND THAT'S WHERE WE, THAT'S WHERE WE MET MS. HOLMES AND
01:35PM 25 MR. BALWANI.

01:35PM 1 THAT WAS -- SO WE SAT DOWN AND THEY WALKED US THROUGH THE
01:35PM 2 BUSINESS, THE THERANOS BUSINESS.

01:35PM 3 AND SO THEY STARTED OUT TALKING ABOUT THE TECHNOLOGY, WHAT
01:35PM 4 IT COULD DO, THAT IT COULD MATCH ALL THOUSAND CPT CODES THAT
01:35PM 5 REFERENCE LABORATORIES LIKE QUEST AND LABCORP, THE COMPANIES
01:35PM 6 THAT DO A LOT OF THE LAB TESTING, THAT IT COULD DO ALL OF THOSE
01:36PM 7 TESTS.

01:36PM 8 THEY DESCRIBED FOR US HOW THE LAST TEN YEARS THEY HAD BEEN
01:36PM 9 IN STEALTH MODE AND OVER THAT TIME THEY HAD BEEN WORKING WITH
01:36PM 10 THE GOVERNMENT, THE DEPARTMENT OF DEFENSE, AND THE
01:36PM 11 PHARMACEUTICAL INDUSTRY, AND THEY DESCRIBED BOTH OF THOSE, BOTH
01:36PM 12 OF THOSE ACTIVITIES.

01:36PM 13 THE DEPARTMENT OF DEFENSE, THEY TALKED ABOUT HOW THEIR
01:36PM 14 TECHNOLOGY HAD BEEN, WAS BEING USED ON MEDEVACS, HOW IMPORTANT
01:36PM 15 IT WAS, HOW IT ACTUALLY SAVED LIVES IN THE BATTLEFIELD TO GET
01:36PM 16 REALLY IMPORTANT DIAGNOSTIC INFORMATION TO EMERGENCY --
01:36PM 17 MILITARY EMERGENCY ROOMS WITHIN AN HOUR THAT SAVED LIVES.

01:36PM 18 THEY TALKED ABOUT THE PHARMACEUTICAL INDUSTRY AND HOW THEY
01:36PM 19 HAD NUMEROUS PHARMACEUTICAL CLIENTS THAT HAD ASKED THEM TO USE
01:36PM 20 THEIR TECHNOLOGY, DEVELOP SPECIFIC TESTS FOR EXPERIMENTAL
01:36PM 21 MEDICINES, WHICH THEY THEN, WHICH THEY THEN DID AND PROVIDED
01:36PM 22 THAT SERVICE TO THOSE COMPANIES.

01:37PM 23 AND THEY SAID THAT THERE WERE SO MANY THINGS THAT THEY HAD
01:37PM 24 TO DO WORKING WITH THE PHARMACEUTICAL COMPANIES, SO MANY
01:37PM 25 DIFFERENT TESTS THAT THEY HAD TO DEVELOP, THAT THAT'S WHAT

01:37PM 1 OPENED THEIR EYES TO THE IDEA THAT, YOU KNOW, WE SHOULD, WE
01:37PM 2 SHOULD DO A BROAD RETAIL PRODUCT.

01:37PM 3 THEY, THEY THEN TALKED ABOUT THE QUALITY OF THE TECHNOLOGY
01:37PM 4 AND EXPLAINED TO US THAT THEIR SYSTEMS, THEIR PROPRIETARY
01:37PM 5 TECHNOLOGY WAS ACTUALLY SUPERIOR TO THE CONVENTIONAL LABORATORY
01:37PM 6 SYSTEMS THAT WERE USED.

01:37PM 7 AND THEY DESCRIBED THE VARIABILITY THAT EXISTS IN A
01:37PM 8 TYPICAL REFERENCE LAB WHERE YOU SEE ALL SORTS OF DIFFERENT
01:37PM 9 THIRD PARTY EQUIPMENT. ALL OF THAT EQUIPMENT HAS HUMAN LAB
01:37PM 10 TECHNICIANS THAT OPERATE THAT EQUIPMENT, THERE'S DIFFERENT
01:37PM 11 CHEMICALS THAT GO THAT NEED TO BE USED WITH DIFFERENT SYSTEMS,
01:37PM 12 AND THAT INTRODUCES A LOT OF VARIABILITY INTO TESTING RESULTS,
01:37PM 13 BOTH BETWEEN DIFFERENT PIECES OF EQUIPMENT IN THE SAME LAB, AND
01:38PM 14 THEN BETWEEN DIFFERENT LABORATORIES.

01:38PM 15 AND THEY CONTRASTED THAT TO THEIR TECHNOLOGY, WHICH WAS
01:38PM 16 EVERYTHING WAS CONTAINED, YOU KNOW, IN, IN ONE, IN ONE SYSTEM.

01:38PM 17 AND AS A RESULT, THEY HAD NO HUMAN VARIATION, AND THEY
01:38PM 18 EXPLAINED TO US THAT THAT DRAMATICALLY DECREASED THE
01:38PM 19 VARIABILITY AND THE CONSISTENCY OF RESULTS ON THEIR PROPRIETARY
01:38PM 20 TECHNOLOGY, AND I THINK THEY TOLD US SOMETHING TO THE ORDER OF,
01:38PM 21 YOU KNOW, LESS THAN 3 PERCENT OR 4 PERCENT KIND OF VARIATION,
01:38PM 22 SYSTEM LEVEL VARIATION.

01:38PM 23 AND THEY COMPARED THAT TO TESTS, I THINK THEY USED THE
01:38PM 24 EXAMPLE LIKE HIGH DENSITY LIPOPROTEIN, OR HDL, WHERE YOU CAN
01:38PM 25 SEE 30, 35 PERCENT VARIATION WITHIN THE SAME LAB JUST BECAUSE

01:38PM 1 OF INHERENTLY, YOU KNOW, ALL OF THE SOURCES OF POTENTIAL ERROR
01:39PM 2 AND VARIANCE THAT COULD OCCUR.

01:39PM 3 SO THEY EXPLAINED THAT TO US.

01:39PM 4 WE THEN PIVOTED BACK --

01:39PM 5 Q. MR. GROSSMAN, I DON'T MEAN TO INTERRUPT YOU, BUT I DID
01:39PM 6 HAVE SOME FOLLOW-UP QUESTIONS ABOUT WHAT YOU JUST DESCRIBED.
01:39PM 7 SO I DON'T MEAN TO CUT YOU OFF.

01:39PM 8 BUT LET ME ASK YOU AND GO BACK TO WHERE YOU STARTED, WHICH
01:39PM 9 WAS THE SECURITY PROCEDURES THAT YOU WERE GOING THROUGH IN
01:39PM 10 THERE.

01:39PM 11 YOU'VE BEEN AT PRIVATE COMPANIES BEFORE AS PART OF YOUR
01:39PM 12 INVESTMENT PROCESS; CORRECT?

01:39PM 13 A. YES.

01:39PM 14 Q. AND YOU'VE HAD AN OPPORTUNITY TO -- HOW DID THERANOS'S
01:39PM 15 COMPARE TO WHAT YOU HAD EXPERIENCED PREVIOUSLY?

01:39PM 16 A. THAT'S ACTUALLY KIND OF WHY I REMEMBER IT IS IT'S -- IT'S
01:39PM 17 VERY UNUSUAL FOR A PRIVATE COMPANY TO HAVE THAT KIND OF
01:39PM 18 SECURITY.

01:39PM 19 NORMALLY YOU GET OFF THE ELEVATOR AND YOU'RE IN THE OFFICE
01:39PM 20 AND THERE'S A FEW PEOPLE THERE.

01:39PM 21 AND THIS WAS, THIS WAS LIKE, YOU KNOW, TRYING TO GET INTO
01:39PM 22 A FORTUNE 500 COMPANY AND, YOU KNOW, WITH, YOU KNOW, SECURITY,
01:39PM 23 YOU KNOW, IMPOSING SORT OF SECURITY TYPE, YOU KNOW, PEOPLE THAT
01:39PM 24 WERE IN THE LAB BEE AREA.

01:40PM 25 IT WAS JUST A -- IT HAD A DIFFERENT FEEL, A VERY DIFFERENT

01:40PM 1 FEEL FROM WHAT WE TYPICALLY SEE FROM PRIVATE COMPANIES.

01:40PM 2 Q. AND WHO DID MOST OF THE TALKING IN THIS MEETING IN
01:40PM 3 DECEMBER OF 2013 WITH MS. HOLMES AND MR. BALWANI?

01:40PM 4 A. THIS FIRST MEETING, MS. HOLMES DID MOST OF THE TALKING IN
01:40PM 5 THE FIRST MEETING.

01:40PM 6 Q. AND WERE THERE ANY TIMES WHEN MR. BALWANI INTERRUPTED OR
01:40PM 7 DISAGREED WITH MS. HOLMES?

01:40PM 8 A. NO, NOT TO MY MEMORY.

01:40PM 9 Q. AND DID MS. HOLMES AND MR. BALWANI MAKE STATEMENTS TO YOU
01:40PM 10 ABOUT USE OF THERANOS'S TECHNOLOGY BY THE MILITARY?

01:40PM 11 A. YES.

01:40PM 12 Q. AND I THINK YOU DESCRIBED YOU WERE TOLD IT WAS BEING USED
01:40PM 13 ON MEDEVAC HELICOPTERS?

01:40PM 14 A. YEAH, THEY SAID THEY HAD BEEN WORKING WITH THE DEPARTMENT
01:40PM 15 OF DEFENSE AND THE MILITARY FOR THE LAST TEN YEARS, THAT IT HAD
01:40PM 16 BEEN ONE OF THE REASONS THAT -- IT ALLOWED -- THE WORK THAT IT
01:40PM 17 HAD BEEN DOING WITH THE GOVERNMENT HAD ALLOWED THE COMPANY TO
01:40PM 18 GET THROUGH THIS SORT OF STEALTH MODE WHERE THEY WERE -- YOU
01:40PM 19 KNOW, THEY HADN'T RAISED MONEY IN I THINK OVER A DECADE.

01:41PM 20 SO, YEAH, THE GOVERNMENT -- AND THEN OBVIOUSLY THE --

01:41PM 21 USING THIS TECHNOLOGY IN THE BATTLEFIELD ON MEDEVAC

01:41PM 22 HELICOPTERS, YOU KNOW, SPEAKS TO THE, YOU KNOW, THE, THE -- YOU
01:41PM 23 KNOW -- I MEAN, THE GOVERNMENT WOULD NEVER USE A PIECE OF
01:41PM 24 TECHNOLOGY ON SOLDIERS OR IN THE BATTLEFIELD, YOU KNOW, THEY
01:41PM 25 WOULDN'T JUST DO THAT KIND OF CASUALLY. THEY WOULD HAVE TO GO

01:41PM 1 THROUGH A MAJOR VETTING PROCESS.

01:41PM 2 AND, YOU KNOW, SO IT WAS A -- YOU KNOW, IT WAS AN
01:41PM 3 IMPRESSIVE STATEMENT.

01:41PM 4 Q. WERE YOU ALSO IMPRESSED BY WHAT MS. HOLMES AND MR. BALWANI
01:41PM 5 SAID ABOUT PHARMACEUTICAL COMPANIES?

01:41PM 6 A. YES, WE WERE.

01:41PM 7 WE KNEW -- WE KNOW THOSE COMPANIES VERY WELL, THE MERCKS,
01:41PM 8 THE AMGENS, THE PFIZERS. THE MOST IMPORTANT ASSET THAT THEY
01:41PM 9 HAVE ARE EXPERIMENTAL MEDICINES, AND THE TINIEST MISTAKE IN THE
01:42PM 10 CLINICAL TRIAL CAN SET ONE OF THOSE NEW MEDICINES BACK FOR
01:42PM 11 YEARS. IT CAN COMPROMISE A CLINICAL TRIAL. AND SO THEY TAKE
01:42PM 12 THAT MORE SERIOUSLY THAN ANYTHING ELSE IN THE COMPANY.

01:42PM 13 AND SO THE FACT THAT THEY WERE USING THIS DIAGNOSTIC
01:42PM 14 EQUIPMENT IN THOSE CLINICAL TRIAL SETTINGS ON ACTUAL HUMANS,
01:42PM 15 YOU KNOW, THAT WAS ANOTHER, YOU KNOW, REALLY IMPRESSIVE
01:42PM 16 STATEMENT AND JUST SPOKE TO THE QUALITY OF THE PRODUCT AND THE,
01:42PM 17 THE CAPABILITIES OF THE TECHNOLOGY.

01:42PM 18 Q. AND MS. HOLMES AND MR. BALWANI MADE STATEMENTS TO YOU
01:42PM 19 ABOUT ELIMINATING THE PREANALYTIC ERRORS? DID I HEAR YOU SAY
01:42PM 20 SOMETHING TO THAT EFFECT?

01:42PM 21 A. YEAH. THEY EXPLAINED THAT THIS IS THE -- THE SYSTEM
01:42PM 22 VARIATION ON THEIR TECHNOLOGY WAS DRAMATICALLY LESS THAN THE
01:42PM 23 TYPICAL THIRD PARTY EQUIPMENT THAT ARE USED IN REFERENCE LABS
01:42PM 24 LIKE QUEST OR LABCORP.

01:43PM 25 SO, YES, THAT -- AND I ACTUALLY THEY ACTUALLY QUOTED US A

01:43PM 1 NUMBER, I THINK IT WAS, LIKE, LESS THAN 3 PERCENT OR LESS THAN
01:43PM 2 4 PERCENT OR SOMETHING LIKE THAT.

01:43PM 3 Q. IN THIS MEETING IN DECEMBER OF 2013 WITH MS. HOLMES AND
01:43PM 4 MR. BALWANI, DID THEY SHOW YOU ANY THERANOS DEVICES?

01:43PM 5 A. I DON'T RECALL SPECIFICALLY IF IT WAS THAT MEETING OR THE
01:43PM 6 NEXT MEETING, BUT WE DID SEE DEVICES WHEN WE WERE THERE, YES.

01:43PM 7 Q. DESCRIBE THE DEVICES YOU WERE SHOWN ULTIMATELY.

01:43PM 8 A. I REMEMBER THEY HAD TWO, TWO DEVICES THAT THEY SHOWED US.

01:43PM 9 THEY SHOWED US THE DEVICE THAT THEY USED I THINK IN THE
01:43PM 10 CLINICAL TRIAL SETTING. THEY HAD A BANK OF THOSE DEVICES ON
01:43PM 11 TABLES, YOU KNOW, IN A ROOM, IN THE LOBBY AREA FROM WHAT I
01:43PM 12 REMEMBER.

01:43PM 13 AND THEN THEY HAD A SEPARATE ROOM WHERE THEY HAD THE, THE
01:43PM 14 RETAIL, THE CURRENT SORT OF SAMPLE PROCESSING UNIT. THAT WAS,
01:44PM 15 THAT WAS A DIFFERENT SIZE. IT WAS -- I THINK IT WAS A LITTLE
01:44PM 16 SMALLER OR A LITTLE BIT WIDER (INDICATING), AND IT HAD MORE OF
01:44PM 17 A USER INTERFACE, A DIFFERENT USER INTERFACE. THEY HAD A
01:44PM 18 SCREEN THAT I THINK WAS DIFFERENT.

01:44PM 19 AND SO THEY HAD A SEPARATE ROOM WITH THOSE DEVICES THAT
01:44PM 20 WERE, THAT WERE -- WITH THOSE DEVICES, AGAIN, FROM WHAT I
01:44PM 21 REMEMBER, ON A TABLE.

01:44PM 22 Q. AND THIS IS A ROOM THAT MS. HOLMES AND MR. BALWANI SHOWED
01:44PM 23 YOU?

01:44PM 24 A. YEAH. I, I DON'T REMEMBER WHETHER IT WAS ON THE WAY IN OR
01:44PM 25 THE WAY OUT, BUT, YEAH, WE -- I REMEMBER TOURING THAT ROOM.

01:44PM 1 IT WAS IN BETWEEN THE SECURITY AREA AND THE KITCHEN AS YOU
01:44PM 2 WALKED INTO THE BUILDING. THIS IS THEIR OLD -- THESE ARE THEIR
01:44PM 3 OLD OFFICES BEFORE THEY MOVED OUT ONTO PAGE MILL ROAD.

01:44PM 4 Q. OKAY. AND I OBSERVED YOU USING HAND GESTURES IN
01:44PM 5 DESCRIBING THE DEVICES, WHICH AREN'T GOING TO SHOW UP IN THE
01:44PM 6 RECORD.

01:44PM 7 SO CAN YOU GIVE US A SENSE OF HOW BIG THE DEVICES WERE?
01:44PM 8 WHAT THE DIMENSIONS WERE? HOW THEY COMPARED TO OTHER MEDICAL
01:45PM 9 EQUIPMENT YOU WOULD HAVE OBSERVED?

01:45PM 10 A. YEAH, THE DEVICES WERE -- THEY WERE THE SIZE OF KIND OF A
01:45PM 11 PC, AND ONE WAS A LITTLE BIT TALLER AND THE OTHER WAS A LITTLE
01:45PM 12 BIT WIDER, BUT ROUGHLY THAT SIZE. THE FORM FACTOR OF A, OF A
01:45PM 13 PC.

01:45PM 14 Q. AND WAS THE SIZE OF THE DEVICES ATTRACTIVE TO YOU?

01:45PM 15 A. I MEAN, IT WAS, YEAH, SHOCKING HOW SMALL THE DEVICES WERE
01:45PM 16 RELATIVE TO WHAT THEY COULD DO, YES.

01:45PM 17 Q. AND WHY WAS THAT ATTRACTIVE TO YOU?

01:45PM 18 A. WELL, IT'S -- YOU KNOW, A CONVENTIONAL REFERENCE
01:45PM 19 LABORATORY HAS THOUSANDS OF SQUARE FEET, AND THEY HAVE
01:45PM 20 THOUSANDS OF SQUARE FEET BECAUSE THEY HAVE DIFFERENT EQUIPMENT
01:45PM 21 THAT DOES DIFFERENT TYPES OF ANALYSES.

01:45PM 22 AND IT'S -- SO TO BE ABLE TO TAKE ALL OF THAT AND
01:45PM 23 MINIATURIZE IT INTO SOMETHING THE SIZE OF A PC WAS JUST A --
01:45PM 24 YOU KNOW, IT WAS KIND OF A REVOLUTIONARY APPROACH TO DIAGNOSTIC
01:46PM 25 TESTING.

01:46PM 1 Q. IN THIS MEETING IN DECEMBER OF 2013, DID MS. HOLMES OR
01:46PM 2 MR. BALWANI MAKE ANY STATEMENTS ABOUT THE AMOUNT OF REVENUE
01:46PM 3 BEING GENERATED BY THERANOS'S RELATIONSHIP WITH PHARMA AND THE
01:46PM 4 MILITARY?

01:46PM 5 A. I DON'T SPECIFICALLY RECALL -- WELL, I DO REMEMBER AT THE
01:46PM 6 END OF THE MEETING THEY TOLD US THAT THEY HAD RAISED, OH, I
01:46PM 7 WANT TO SAY IT WAS \$220 MILLION OVER THE LAST TEN YEARS THROUGH
01:46PM 8 WORKING WITH THE MILITARY AND PHARMA.

01:46PM 9 I DON'T RECALL IF THEY BROKE OUT WHICH WAS WHICH, BUT THAT
01:46PM 10 REVENUE IS WHAT SUSTAINED THE COMPANY OVER THAT TEN YEAR PERIOD
01:46PM 11 THAT THEY WERE IN STEALTH MODE BUILDING THE NUMBER OF TESTS FOR
01:46PM 12 THE RETAIL PRODUCT.

01:46PM 13 Q. SO YOU WERE TOLD THAT THERANOS HAD 220 MILLION IN REVENUE?

01:46PM 14 A. YES.

01:46PM 15 Q. IN SOME COMBINATION FROM PHARMACEUTICAL COMPANIES AND THE
01:47PM 16 MILITARY?

01:47PM 17 A. CORRECT.

01:47PM 18 Q. AND WAS THAT IMPRESSIVE TO YOU?

01:47PM 19 A. YES, IT WAS.

01:47PM 20 Q. AND WHY WAS IT IMPRESSIVE TO YOU?

01:47PM 21 A. YES. WELL, FIRST OF ALL, MILITARY ACCOUNTS AND REVENUE
01:47PM 22 FROM THE GOVERNMENT GO THROUGH A WHOLE VETTING PROCESS,
01:47PM 23 PROCUREMENT PROCESS. THERE'S TECHNICAL DUE DILIGENCE.

01:47PM 24 SO THE FACT THAT NOT ONLY WAS THE TECHNOLOGY USED IN A
01:47PM 25 BATTLEFIELD SETTING, BUT IT HAD GONE THROUGH THAT WHOLE

01:47PM 1 PROCUREMENT PROCESS WAS EXTREMELY IMPRESSIVE.

01:47PM 2 AND THEN ON THE PHARMACEUTICAL SIDE, THERE ARE -- AS I
01:47PM 3 SAID BEFORE, THAT IS SUCH A CRITICALLY SENSITIVE AREA, YOU
01:47PM 4 KNOW, USING DIAGNOSTIC EQUIPMENT IN A CLINICAL TRIAL SETTING,
01:47PM 5 THE FACT THAT THEY WERE PAYING FOR THOSE SERVICES AND COMPETING
01:47PM 6 AGAINST GREAT COMPANIES, COMAX, IQVIA, PPD, I MEAN, THESE ARE
01:48PM 7 GLOBAL FORTUNE 500 COMPANIES THAT DO THIS TYPE OF CLINICAL
01:48PM 8 TRIAL WORK AND THEY PROVIDE THE LABORATORY SERVICES ASSOCIATED
01:48PM 9 WITH THOSE TRIALS.

01:48PM 10 SO THAT WAS, AGAIN, IT WAS A REAL, A REAL -- IT WAS VERY
01:48PM 11 IMPRESSIVE THAT THEY HAD GENERATED THAT MUCH BUSINESS WITH THE
01:48PM 12 PHARMACEUTICAL INDUSTRY OVER THE LAST TEN YEARS.

01:48PM 13 Q. HOW DID THIS MEETING IN DECEMBER OF 2013 END?

01:48PM 14 A. WELL, WE TALKED ABOUT THE WALGREENS DEAL.

01:48PM 15 THEY HIGHLIGHTED THAT THEY WERE -- ACTUALLY, AT THAT POINT
01:48PM 16 IN TIME THEY WERE, THEY WERE IN THE PROCESS OF ROLLING OUT TO
01:48PM 17 ALL 8100 WALGREENS STORES.

01:48PM 18 THEY WERE USING THEIR PROPRIETARY TECHNOLOGY ON ACTUAL
01:48PM 19 HUMANS. THEY WERE DOING TESTS AND BEING REIMBURSED, WHICH IS A
01:48PM 20 TERM THAT WE USE, WHICH BASICALLY MEANS THAT YOU'RE BEING PAID
01:48PM 21 FOR THOSE SERVICES BY TYPICALLY AN INSURANCE COMPANY.

01:48PM 22 SO THEY WERE -- SO THEY EXPLAINED THAT THAT WAS A -- THIS
01:49PM 23 WASN'T, YOU KNOW, WE ARE GOING TO DO THIS. THEY WERE ACTUALLY
01:49PM 24 DOING THAT.

01:49PM 25 THEY ALSO TALKED ABOUT THE VERTICAL INTEGRATION, WHICH WE

01:49PM 1 WERE -- WHICH WAS ANOTHER SURPRISING STATEMENT.

01:49PM 2 AND WHEN THEY SAY VERTICALLY INTEGRATED, THEY WERE
01:49PM 3 EXPLAINING THAT THEY WANTED TO, AND THEY WERE, MAKING ALL OF
01:49PM 4 THEIR OWN PROPRIETARY TECHNOLOGY.

01:49PM 5 AND IN THE MEDICAL DEVICE FIELD, IN THE CLINICAL
01:49PM 6 DIAGNOSTIC FIELD, THAT IS VERY UNUSUAL. IT'S SORT OF LIKE WHAT
01:49PM 7 YOU SEE WITH TECHNOLOGY, IPHONES. MOST OF THAT IS OUTSOURCED
01:49PM 8 TO COMPANIES THAT ARE -- THAT MAKE OR ASSEMBLE THOSE TYPES OF
01:49PM 9 MACHINES.

01:49PM 10 AND THE SAME IS TRUE IN THE MEDICAL DEVICE AND CLINICAL
01:49PM 11 DIAGNOSTICS PHASE.

01:49PM 12 SO THE FACT THAT THEY'RE GOING TO BE MAKING THEIR OWN
01:49PM 13 PROPRIETARY TECHNOLOGY WAS SURPRISING, AND THEY EXPLAINED THAT
01:49PM 14 THIS WAS BECAUSE IT ALLOWED THEM TO CONTROL THE COSTS, AND IT
01:49PM 15 WAS AN IMPORTANT SOURCE OF COMPETITIVE ADVANTAGE, SOMETHING
01:49PM 16 THAT WE KIND OF BUILT ON IN SUBSEQUENT MEETINGS.

01:49PM 17 AND THEN THE LAST THING WAS WE SORT OF LEFT AND ENDED AT
01:50PM 18 SORT OF THE FINANCING. WE'RE LOOKING TO RAISE MONEY, WE
01:50PM 19 HAVEN'T RAISED MONEY IN A LONG TIME, AND, YOU KNOW, IF YOU'RE
01:50PM 20 INTERESTED, LET US KNOW IF THERE'S AN INTEREST IN FOLLOWING UP
01:50PM 21 AFTER THIS INITIAL MEETING.

01:50PM 22 Q. YOU MENTIONED THERE WAS A REFERENCE TO VERTICAL
01:50PM 23 INTEGRATION AND THIS CONCEPT OF MAKING ALL OF YOUR OWN
01:50PM 24 EQUIPMENT.

01:50PM 25 WAS THAT ATTRACTIVE TO YOU?

01:50PM 1 A. YEAH. IT WAS, IT WAS AN UNUSUAL, IT WAS AN UNUSUAL
01:50PM 2 STRATEGY FOR A COMPANY, A COMPANY AT THEIR STAGE.

01:50PM 3 BUT I THINK IT HIGHLIGHTED JUST HOW UNIQUE AND SPECIAL THE
01:50PM 4 PROPRIETARY TECHNOLOGY WAS AND HOW IMPORTANT IT WAS THAT THEY
01:50PM 5 CONTROLLED, THAT THEY CONTINUED TO DRIVE THAT TECHNOLOGY DOWN
01:50PM 6 THE COST CURVE.

01:50PM 7 THEY -- THIS KIND OF CAME UP IN SUBSEQUENT MEETINGS, BUT,
01:50PM 8 YOU KNOW, WE REALLY PUSHED THEM ON WHY NOT JUST SELL THE
01:51PM 9 TECHNOLOGY? WHY NOT JUST BE A CLINICAL DIAGNOSTICS OR MEDICAL
01:51PM 10 DEVICE COMPANY?

01:51PM 11 AND THE ANSWER WAS THAT THEY WANTED TO USE -- BY BEING
01:51PM 12 VERTICALLY INTEGRATING AND MAKING THEIR OWN EQUIPMENT, THAT
01:51PM 13 PROVIDED THEM AN ENORMOUS COST ADVANTAGE IN THE LABORATORY
01:51PM 14 SERVICES BUSINESS. THEY WERE COMPETING AGAINST COMPANIES THAT
01:51PM 15 HAD TO BUY THIRD PARTY EQUIPMENT THAT COST A LOT OF MONEY, AND
01:51PM 16 THEN THEY HAD TO GET PEOPLE TO WORK THAT EQUIPMENT.

01:51PM 17 SO BY HAVING THEIR OWN EQUIPMENT AND MAKING IT THEMSELVES,
01:51PM 18 THEY HAD THE ABILITY TO REMOVE A NUMBER OF THE -- THEY COULD
01:51PM 19 CONTINUE TO DRIVE DOWN THE COMPLEXITY OF THE DEVICE, THEY COULD
01:51PM 20 DRIVE COST DOWN.

01:51PM 21 AND IT PROVIDED THEM A HUGE COST ADVANTAGE WHEN IT CAME TO
01:51PM 22 DELIVERING LABORATORY SERVICES AGAINST AN INCUMBENT INDUSTRY
01:51PM 23 THAT WAS, FOR ALL INTENTS AND PURPOSES, HADN'T CHANGED IN 30,
01:51PM 24 40 YEARS, AND THAT'S THE LABCORPS AND THE QUESTS OF THE WORLD.

01:52PM 25 Q. THANK YOU, MR. GROSSMAN.

01:52PM 1 I'VE PLACED BEFORE YOU A BINDER OF DOCUMENTS. DO YOU HAVE
01:52PM 2 THAT IN FRONT OF YOU?

01:52PM 3 A. YES.

01:52PM 4 MR. LEACH: DOES THE COURT HAVE A COPY?

01:52PM 5 THE COURT: YES.

01:52PM 6 BY MR. LEACH:

01:52PM 7 Q. I'D LIKE TO DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS
01:52PM 8 EXHIBIT 1360.

01:52PM 9 A. OKAY.

01:52PM 10 Q. AND DO YOU SEE IN THE BODY OF THIS DOCUMENT THERE'S AN
01:52PM 11 EMAIL FROM SOMEONE NAMED CHRIS JAMES TO ELIZABETH HOLMES, WITH
01:52PM 12 A COPY TO SUNNY BALWANI AND YOURSELF?

01:52PM 13 A. YES, I DO.

01:52PM 14 Q. AND DO YOU SEE THAT THIS IS DATED DECEMBER 23RD, 2013?

01:52PM 15 A. YES.

01:52PM 16 Q. AND IS THIS CLOSE IN TIME TO YOUR INITIAL MEETING WITH
01:52PM 17 MS. HOLMES AND MR. BALWANI?

01:52PM 18 A. YES. I BELIEVE IT WAS AFTER OUR INITIAL MEETING, YES.

01:52PM 19 Q. OKAY. AND DOES THIS RELATE TO FOLLOWUP MR. JAMES HAD WITH
01:53PM 20 YOU AND MS. HOLMES AND MR. BALWANI?

01:53PM 21 A. YES.

01:53PM 22 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
01:53PM 23 EXHIBIT 1360.

01:53PM 24 MS. WALSH: NO OBJECTION.

01:53PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

(GOVERNMENT'S EXHIBIT 1360 WAS RECEIVED IN EVIDENCE.)

MR. LEACH: MS. WACHS, IF WE CAN ZOOM IN ON THE TOP.

Q. MR. GROSSMAN, LET ME FIRST DRAW YOUR ATTENTION TO

MR. JAMES'S INITIAL EMAIL ON DECEMBER 19TH.

DO YOU SEE WHERE HE WROTE, "ELIZABETH, I WAS JUST CHECKING
IN TO SEE IF WE CAN MOVE THE PROCESS FORWARD. I UNDERSTAND UR
PRIORITIES ON GETTING YEAR END CLOSE DONE, BUT WE ARE VERY
INTERESTED."

DO YOU SEE THAT?

A. YES.

Q. AND WAS IT TRUE IN OR AROUND THIS TIME PERIOD THAT PFM WAS
VERY INTERESTED IN A POTENTIAL INVESTMENT?

A. YES, WE WERE VERY IMPRESSED THAT -- WITH WHAT WE LEARNED
IN THE FIRST MEETING.

Q. AND THEN UP AT THE TOP MR. JAMES WRITES, "ELIZABETH AND
SUNNY,

"WE WILL FOLLOW UP WITH DUE DILIGENCE QUESTIONS AND A CALL
WITH SUNNY WHEN IT WORKS. IN TERMS OF THE SIZE, WE ARE VERY
FLEXIBLE. OUR HEALTH CARE FUND CAN DO FROM 5 MIN TO 25 PLUS."

DO YOU SEE THAT?

A. YES.

Q. AND AFTER THIS INITIAL MEETING WITH MS. HOLMES AND
MR. BALWANI, DID YOU CONTINUE TO ENGAGE WITH MR. BALWANI TO GET
INFORMATION ABOUT THERANOS?

A. YES.

01:54PM 1 Q. LET ME MOVE FORWARD IN TIME TO JANUARY OF 2014.

01:54PM 2 MS. WACHS, WE CAN TAKE THIS DOWN.

01:54PM 3 DID YOU MEET WITH MS. HOLMES AND MR. BALWANI AGAIN EARLY
01:54PM 4 IN JANUARY OF 2014?

01:54PM 5 A. YES.

01:54PM 6 Q. WHERE WAS THIS MEETING?

01:54PM 7 A. THAT MEETING WAS ALSO -- IT WAS IN THEIR CORPORATE
01:54PM 8 HEADQUARTERS ON CALIFORNIA AVENUE IN PALO ALTO.

01:54PM 9 Q. OKAY. WHO ATTENDED THIS MEETING?

01:54PM 10 A. THIS MEETING WE BROUGHT A NUMBER OF OTHER INVESTMENT
01:54PM 11 PROFESSIONALS FROM OUR FIRM.

01:54PM 12 SO WE HAD VIVEK KHANNA, WHO IS OUR -- HE'S OUR HEALTH CARE
01:55PM 13 SERVICES ANALYST; WE HAD ALEX RABODZEY, WHO IS OUR BIOTECH
01:55PM 14 DIAGNOSTICS ANALYST; AND THEN I THINK WE HAD SRI BALASURYAN,
01:55PM 15 WHO WAS OUR JUNIOR ANALYST AT THE TIME AND HELPS WITH A LOT OF
01:55PM 16 THE MODEL BUILDING AND KIND OF WORKED FOR EVERYBODY, WORKED FOR
01:55PM 17 A NUMBER OF THE SENIOR PEOPLE.

01:55PM 18 I WAS ALSO THERE.

01:55PM 19 AND I DON'T RECALL WHETHER MY PARTNER, CHRIS, WAS THERE OR
01:55PM 20 NOT. HE MAY HAVE BEEN.

01:55PM 21 Q. OKAY. WERE YOU SHOWN ANY DOCUMENTS DURING THIS MEETING?

01:55PM 22 A. YES. THIS MEETING WE WERE SHOWN -- THEY HAD A
01:55PM 23 PRESENTATION ON A LAPTOP AND THAT INCLUDED A NUMBER OF -- IT
01:55PM 24 INCLUDED A PRESENTATION. IT HAD, IT HAD SCIENTIFIC TESTING
01:55PM 25 INFORMATION, AND IT ALSO HAD -- THEY ALSO HAD A FINANCIAL MODEL

01:55PM 1 OF THE COMPANY THAT WE, WE REVIEWED IN THAT MEETING.

01:56PM 2 Q. PRIOR TO THIS MEETING, DID YOU PROPOUND QUESTIONS TO
01:56PM 3 MR. BALWANI ON CERTAIN TOPICS THAT YOU WERE LOOKING FOR
01:56PM 4 INFORMATION ON?

01:56PM 5 A. YES. WE -- OUR TEAM PUT TOGETHER A LIST OF QUESTIONS SO
01:56PM 6 THAT WE COULD MAKE THE NEXT MEETING AS PRODUCTIVE AS POSSIBLE.

01:56PM 7 SO WE ASSEMBLED THOSE QUESTIONS AND THEN SENT THEM TO I
01:56PM 8 BELIEVE IT WAS MR. BALWANI.

01:56PM 9 Q. LET ME DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS
01:56PM 10 EXHIBIT 1404.

01:56PM 11 DOES THIS APPEAR TO BE AN EMAIL FROM MR. BALWANI TO YOU
01:56PM 12 AND OTHERS DATED JANUARY 7TH, 2014?

01:56PM 13 A. YES.

01:56PM 14 Q. AND DO YOU SEE THE TOPIC DUE DILIGENCE QUESTIONS?

01:57PM 15 A. YES.

01:57PM 16 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
01:57PM 17 EXHIBIT 1404.

01:57PM 18 MS. WALSH: NO OBJECTION.

01:57PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:57PM 20 (GOVERNMENT'S EXHIBIT 1404 WAS RECEIVED IN EVIDENCE.)

01:57PM 21 MR. LEACH: LET'S START, IF WE COULD, MS. WACHS, AT
01:57PM 22 THE BOTTOM OF PAGE 1.

01:57PM 23 Q. DO YOU SEE, MR. GROSSMAN, THE DATE OF THIS IS
01:57PM 24 JANUARY 6TH, 2014?

01:57PM 25 A. YES.

01:57PM 1 Q. AND THE SUBJECT IS DUE DILIGENCE QUESTIONS?

01:57PM 2 A. YES.

01:57PM 3 Q. AND IN THE FIRST PARAGRAPH YOU WROTE, "I HOPE YOU BOTH HAD
01:57PM 4 AN ENJOYABLE FINISH TO WHAT WAS OBVIOUSLY A TREMENDOUSLY
01:57PM 5 SUCCESSFUL YEAR FOR THE COMPANY."

01:57PM 6 AND THEN YOU CONTINUE. "BELOW IS OUR LIST OF DUE
01:57PM 7 DILIGENCE QUESTIONS. WE WERE HOPING TO START THE PROCESS AS
01:57PM 8 SOON AS POSSIBLE."

01:57PM 9 DO YOU SEE THAT?

01:57PM 10 A. YES.

01:57PM 11 Q. AND DOES THIS INCLUDE A LIST OF QUESTIONS THAT YOU PUT
01:57PM 12 FORTH TO MS. HOLMES AND MR. BALWANI ABOUT WHAT YOU WANTED TO
01:57PM 13 LEARN ABOUT THERANOS?

01:57PM 14 A. YES.

01:57PM 15 Q. OKAY. AND IF WE COULD ZOOM BACK UP, MS. WACHS, TO THE
01:58PM 16 NEXT EMAIL IN THE CHAIN.

01:58PM 17 DO YOU SEE A RESPONSE FROM MR. BALWANI?

01:58PM 18 A. YES.

01:58PM 19 Q. AND DO YOU SEE WHERE HE WROTE IN THE SECOND PARAGRAPH, "WE
01:58PM 20 ARE AVAILABLE THIS WEDNESDAY FROM 1-5 P.M. OR ON FRIDAY FROM 9
01:58PM 21 A.M. TO 1 P.M. AT OUR OFFICE. WE CAN COVER ALL OF YOUR
01:58PM 22 QUESTIONS IN DETAIL."

01:58PM 23 IS THAT WHAT MR. BALWANI WROTE TO YOU?

01:58PM 24 A. YES.

01:58PM 25 Q. OKAY. AND IF WE CAN ZOOM OUT AGAIN, MS. WACHS. AND

01:58PM 1 ACTUALLY, IF WE CAN GO ONE MORE UP THE CHAIN.

01:58PM 2 DOES IT APPEAR THAT YOU AND MR. BALWANI CONFIRMED A

01:58PM 3 MEETING FOR FRIDAY THAT FIRST OR SECOND WEEK OF JANUARY AT

01:58PM 4 THERANOS'S OFFICES?

01:58PM 5 A. YES.

01:58PM 6 Q. OKAY. I'D LIKE TO GO THROUGH SOME OF THE QUESTIONS THAT

01:58PM 7 YOU ASKED ON PAGE 2.

01:59PM 8 BEFORE WE GET TO THE QUESTIONS, IN THIS YOU WROTE, DEAL

01:59PM 9 TEAM: BRIAN GROSSMAN, ALEX RABODZEY, VIVEK KHANNA, AND

01:59PM 10 SRI BALASURYAN?

01:59PM 11 DO YOU SEE THAT?

01:59PM 12 A. YES.

01:59PM 13 Q. AND ARE THOSE FOLKS THAT WORK WITHIN YOUR COMPANY?

01:59PM 14 A. YES.

01:59PM 15 Q. AND YOU HAVE AN OUTLINE WITH SEVEN BULLETS BEGINNING WITH

01:59PM 16 TECHNOLOGY AND ENDING IN FINANCIAL MODEL/PROJECTIONS.

01:59PM 17 DO YOU SEE THAT?

01:59PM 18 A. YES.

01:59PM 19 Q. AND DO THESE COVER THE TOPICS THAT YOU WERE TRYING TO GET

01:59PM 20 INFORMATION FROM MS. HOLMES AND MR. BALWANI ABOUT TO MAKE AN

01:59PM 21 INVESTMENT DECISION?

01:59PM 22 A. YES.

01:59PM 23 Q. OKAY. LET'S ZOOM IN ON PARAGRAPH 1 IF WE COULD,

01:59PM 24 MS. WACHS.

01:59PM 25 YOUR FIRST QUESTION WAS, "HOW DOES YOUR ACCURACY AND SPEED

01:59PM 1 STACK UP AGAINST TRADITIONAL TESTS."

01:59PM 2 DO YOU SEE THAT?

01:59PM 3 A. YES.

01:59PM 4 Q. AND WHY WERE YOU ASKING THAT?

02:00PM 5 A. WELL, WE WANTED TO UNDERSTAND WHETHER THE TECHNOLOGY WAS
02:00PM 6 BETTER THAN CONVENTIONAL DIAGNOSTIC EQUIPMENT, WHETHER IT WAS
02:00PM 7 EQUIVALENT, WHETHER IT WAS MAYBE NOT QUITE AS GOOD BUT IT WAS
02:00PM 8 FASTER.

02:00PM 9 WE WANTED TO REALLY UNDERSTAND EXACTLY WHAT THE
02:00PM 10 CAPABILITIES WERE, WHAT THE LIMITATIONS WERE SO THAT WE COULD
02:00PM 11 UNDERSTAND HOW THIS WAS LIKELY GOING TO IMPACT THE LAB TESTING
02:00PM 12 MARKET OVER THE NEXT COUPLE OF YEARS.

02:00PM 13 Q. AND DID THIS TOPIC COME UP IN YOUR MEETING WITH MS. HOLMES
02:00PM 14 AND MR. BALWANI AT THERANOS'S OFFICES?

02:00PM 15 A. YES.

02:00PM 16 Q. AND WHAT DID THEY TELL YOU?

02:00PM 17 A. THIS WAS ONE OF THE FIRST THINGS WE TALKED ABOUT IN THE
02:00PM 18 MEETING, IN THE SECOND MEETING SUBSEQUENT TO THIS.

02:00PM 19 AND THEY REITERATED WHAT THEY TOLD US IN THE FIRST
02:00PM 20 MEETING, WHICH WAS THEIR TECHNOLOGY COULD DO EVERYTHING THAT A
02:00PM 21 REFERENCE LAB OFFERS IN A RETAIL SETTING.

02:00PM 22 THEY -- THERE WERE NO LIMITATIONS. IT TOOK A LOT OF WORK.
02:01PM 23 IT WAS HARD WORK TO KIND OF GET TO THIS POINT, BUT THEY WERE
02:01PM 24 CRYSTAL CLEAR THAT THEY NEEDED TO WAIT UNTIL THEY HAD
02:01PM 25 100 PERCENT COVERAGE BEFORE THEY ROLLED OUT A RETAIL STRATEGY.

02:01PM 1 THEY EXPLAINED HOW THE ONE CHALLENGING AREA FOR THEM WAS
02:01PM 2 MEASURING -- WAS A PROCESS -- AN ANALYTIC TECHNOLOGY CALLED
02:01PM 3 CULTURING WHERE YOU GROW MICROORGANISMS.

02:01PM 4 THEY SAID THAT WAS ONE OF THE HARDEST THINGS THAT THEY HAD
02:01PM 5 TO DEAL WITH.

02:01PM 6 AND THEY EXPLAINED THAT THEY HAD A TECHNOLOGICAL
02:01PM 7 BREAKTHROUGH THAT THEY HAD DEVELOPED ON THEIR OWN CALLED
02:01PM 8 NUCLEIC ACID AMPLIFICATION, WHICH ALLOWED THEM TO IDENTIFY
02:01PM 9 THESE MICROORGANISMS, WHICH CAN BE BACTERIA OR VIRUSES, IN A
02:01PM 10 MATTER OF MINUTES INSTEAD OF WHAT TYPICALLY TOOK TWO OR THREE
02:01PM 11 DAYS, AND THAT WAS GOING TO FORM THE BASIS OF AN ENTIRELY NEW
02:02PM 12 BUSINESS FOCUSSED ON HELPING HOSPITALS OR REPLACING -- USING
02:02PM 13 THIS TECHNOLOGY TO HELP TEST FOR THESE TYPES OF BACTERIA AND
02:02PM 14 VIRUSES, THESE MICROORGANISMS.

02:02PM 15 SO THAT, THAT -- AND I GUESS THE ONLY OTHER THING IS THAT
02:02PM 16 THEY -- YOU KNOW, THAT I WOULD ADD IS THAT THEY DESCRIBED, YOU
02:02PM 17 KNOW, THE WHOLE PROCESS OF HOW YOU HAVE TO DEVELOP THE TEST,
02:02PM 18 VALIDATE THE TEST, AND THEN BRING THAT UP IN THEIR CLIA
02:02PM 19 LABORATORY.

02:02PM 20 AND THEY WERE -- THEY EMPHASIZED TO US THAT THEY DID THIS,
02:02PM 21 EVERY ONE OF THESE TESTS THEY DEVELOPED AND VALIDATED WAS DONE
02:02PM 22 ON THEIR PROPRIETARY SYSTEMS.

02:02PM 23 Q. YOU GO ON TO ASK, "WHAT ARE THE KEY TESTS FROM A
02:03PM 24 COMMERCIAL STANDPOINT AND HOW DOES ACCURACY AND SPEED COMPARE
02:03PM 25 SPECIFICALLY ON THOSE?

02:03PM 1 "CAN YOU ANALYZE SAMPLES AT POC (WALGREENS) OR WILL IT
02:03PM 2 NEED TO GO TO A CLIA FACILITY?

02:03PM 3 "WHAT ARE THE LIMITATIONS TO THE TECHNOLOGY? WHAT TESTS
02:03PM 4 ARE NOT FEASIBLE?"

02:03PM 5 WERE THESE QUESTIONS YOU POSED TO MS. HOLMES AND
02:03PM 6 MR. BALWANI IN YOUR MEETING IN JANUARY OF 2014?

02:03PM 7 A. YES.

02:03PM 8 Q. AND WHAT WERE YOU TOLD?

02:03PM 9 A. WELL, THE ANSWER -- SO GOING KIND OF ONE BY ONE, THERE
02:03PM 10 WERE OVER A THOUSAND BILLING CODES FOR LABORATORIES -- THAT
02:03PM 11 LABORATORIES USED IN THE RETAIL SETTING. THEY COULD MATCH --
02:03PM 12 THEIR ANALYTIC TECHNIQUES COULD MATCH ALL OF THOSE. SO THEY
02:03PM 13 REITERATED THAT.

02:03PM 14 THEY EXPLAINED THAT THEY COULD GET RESULTS IN FOUR HOURS,
02:03PM 15 WHICH WAS FASTER THAN TYPICAL REFERENCE LABS.

02:04PM 16 AND THEY TALKED ABOUT HOW THAT HAD THE POTENTIAL TO CHANGE
02:04PM 17 THE PARADIGM WHERE PHYSICIANS AND PATIENTS INTERACT. YOU COULD
02:04PM 18 HAVE YOUR LAB TESTS DONE ON THE SAME DAY THAT YOU SEE YOUR
02:04PM 19 DOCTOR, AND HOW PROFOUND THAT WAS.

02:04PM 20 THEY ALSO EXPLAINED THAT A TECHNOLOGY LIKE THIS THAT WAS
02:04PM 21 SAFER, EASIER TO ACCESS, FASTER, AS WE GOT MORE INTO THE
02:04PM 22 MEETING, LESS EXPENSIVE, WOULD DRAMATICALLY INCREASE THE SIZE
02:04PM 23 OF THE MARKET. SO THEY ALSO KIND OF EXPLAINED THAT TO US.

02:04PM 24 THEY -- AS FAR AS THE THIRD -- THE NEXT BULLET POINT, THEY
02:04PM 25 EXPLAINED HOW THEY HAD A TWO-STAGE APPROACH TO THE RETAIL

02:04PM 1 SETTING.

02:04PM 2 STAGE ONE WOULD BE USING THEIR PROPRIETARY TECHNOLOGY IN
02:04PM 3 THEIR OWN CLIA LABORATORY FACILITIES, COLLECTING SPECIMENS FROM
02:04PM 4 WALGREENS LOCATIONS, AND THEN ANALYZING THEM LOCALLY.

02:05PM 5 PHASE TWO WOULD BE WHERE THEY WOULD ACTUALLY USE THE --
02:05PM 6 THEY WOULD DEPLOY THE SAMPLE PROCESSING UNIT INTO THE WALGREENS
02:05PM 7 SETTING.

02:05PM 8 SO THEY EXPLAINED THOSE WERE THE TWO PHASES.

02:05PM 9 AND AS FAR AS LIMITATIONS AND WHAT WASN'T FEASIBLE, THEY
02:05PM 10 SAID THERE WAS NOTHING THAT WAS -- THAT THERE WERE NO
02:05PM 11 LIMITATIONS TO THE TECHNOLOGY.

02:05PM 12 Q. YOU SAID THERE WAS A DISCUSSION ABOUT COSTS OR THE COST OF
02:05PM 13 THE DEVICE.

02:05PM 14 DO YOU RECALL THAT COMING UP IN THIS JANUARY MEETING?

02:05PM 15 A. YES.

02:05PM 16 THEY EXPLAINED TO US THAT -- WELL, THERE WERE SORT OF TWO
02:05PM 17 ASPECTS OF COST.

02:05PM 18 THE FIRST IS THAT THEY EXPLAINED THAT THEIR DEVICES
02:05PM 19 ALREADY, THEY ALREADY COST LESS THAN SOME OF THE OTHER
02:05PM 20 EQUIPMENT THAT THIRD PARTY LABORATORIES HAD TO BUY, AND THAT
02:05PM 21 THEY USED AN EXAMPLE OF A COMPANY CALLED CEPHEID AND ANOTHER
02:05PM 22 COMPANY CALL ILLUMINA, BOTH OF WHICH SELL EXPENSIVE MOLECULAR
02:05PM 23 DIAGNOSTIC EQUIPMENT, SO THE TYPE OF STUFF THAT CAN IDENTIFY,
02:06PM 24 THAT CAN IDENTIFY GENETIC MATERIAL WITHIN A SAMPLE.

02:06PM 25 THEY ALREADY HAD -- THEIR TECHNOLOGY ALREADY COST

02:06PM 1 20 PERCENT LESS THAN THOSE MACHINES, AND THEY HAD A -- THEY
02:06PM 2 BELIEVED THEY WOULD BE 80 PERCENT BELOW THE COST OF THOSE
02:06PM 3 MACHINES WITHIN A SHORT PERIOD OF TIME AS THEY RAMPED
02:06PM 4 PRODUCTION OF THEIR MINILABS.

02:06PM 5 THEY ALSO EXPLAINED TO US THAT THIS WHOLE CONCEPT OF
02:06PM 6 TAKING THE ENTIRE LAB AND MINIATURIZING IT HAD PROFOUND
02:06PM 7 IMPLICATIONS FOR COST.

02:06PM 8 UNLIKE CONVENTIONAL LABORATORIES, YOU WOULDN'T HAVE TO
02:06PM 9 HAVE A BIG, THOUSANDS OF SQUARE FOOT FACILITY. YOU WOULDN'T
02:06PM 10 HAVE TO PUT MULTIPLE MACHINES INTO THOSE FACILITIES.

02:06PM 11 THEY COULD SERVICE -- THE EXAMPLE THEY GAVE US WAS THE
02:06PM 12 PHOENIX MARKET. THEY COULD SUPPORT THE ENTIRE PHOENIX ROLLOUT,
02:07PM 13 THE ENTIRE PHOENIX MARKET WITH A 200 SQUARE FOOT FACILITY USING
02:07PM 14 THE PROPRIETARY TECHNOLOGY.

02:07PM 15 AND THEY SAID IT PROVIDED AN ENORMOUS COST ADVANTAGE
02:07PM 16 RELATIVE TO THE QUESTS AND THE LABCORPS THAT THEY COMPETE WITH,
02:07PM 17 AND IT WAS THE REASON WHY THEY COULD OFFER THEIR SERVICE AT
02:07PM 18 HALF THE MEDICARE PRICE.

02:07PM 19 Q. SO HAVING A DEVICE THAT WAS SMALLER AND COST LESS AND FIT
02:07PM 20 WITHIN A SMALLER SQUARE FOOTAGE AREA, THAT WAS WHAT WAS -- WAS
02:07PM 21 THAT ATTRACTIVE TO YOU?

02:07PM 22 A. IT WAS A RADICAL CHANGE IN HOW THIS INDUSTRY OPERATED.
02:07PM 23 IT, IT WAS -- IT HAD ENORMOUS IMPLICATIONS FOR THE EXISTING
02:07PM 24 INDUSTRY.

02:07PM 25 AND IT'S ONE OF THE THINGS THAT, AS INVESTORS, WE LOOK FOR

02:07PM 1 IF YOU CAN FIND SOMETHING NEW THAT IS A WIN FOR EVERYBODY. THE
02:07PM 2 PATIENT WINS, THE SYSTEM WINS, YOU KNOW, YOU HAVE BETTER HEALTH
02:08PM 3 OUTCOMES.

02:08PM 4 YOU KNOW, THIS SEEMED TO CHECK ALL OF THOSE BOXES BASED ON
02:08PM 5 THAT.

02:08PM 6 Q. AND WERE YOU TOLD THAT THIS WAS SOMETHING THAT WAS
02:08PM 7 ASPIRATIONAL, THAT THERANOS HOPED TO DO ONE DAY? OR SOMETHING
02:08PM 8 THAT THERANOS COULD DO IN JANUARY OF 2014?

02:08PM 9 MS. WALSH: OBJECTION. LEADING.

02:08PM 10 THE COURT: OVERRULED.

02:08PM 11 YOU CAN ANSWER THE QUESTION.

02:08PM 12 THE WITNESS: THEY TOLD US IN THE FIRST MEETING THAT
02:08PM 13 THEY WERE ALREADY USING THE TECHNOLOGY ON HUMANS IN THE ACTUAL
02:08PM 14 SETTING AT WALGREENS. THAT WAS IN LATE DECEMBER.

02:08PM 15 AND THEY ALREADY TOLD US THAT IT HAD BEEN USED -- THEY
02:08PM 16 ALREADY TOLD US THAT IT HAD BEEN USED ON MEDEVACS IN THE
02:08PM 17 MILITARY ENVIRONMENT, BATTLEFIELD ENVIRONMENT, AND THAT IT HAD
02:08PM 18 BEEN USED FOR YEARS IN THE CLINICAL TRIAL PHARMACEUTICAL
02:08PM 19 SETTING.

02:08PM 20 SO OUR UNDERSTANDING WAS THAT THIS WAS A TECHNOLOGY THAT
02:09PM 21 EXISTED TODAY. THERE WAS NOTHING ASPIRATIONAL ABOUT WHAT THEY
02:09PM 22 HAD TOLD US THE TECHNOLOGY WAS CAPABLE OF DOING.

02:09PM 23 MR. LEACH: IF WE CAN ZOOM OUT, MS. WACHS, AND GO
02:09PM 24 DOWN TO --

02:09PM 25 Q. DO YOU SEE THERE'S A HEADING NUMBER 2, INTELLECTUAL

02:09PM 1 PROPERTY AND BARRIERS TO ENTRY?

02:09PM 2 A. I SHOULD ALSO SAY, THEY TOLD US THEY WAITED UNTIL THEY
02:09PM 3 COULD COVER THE FULL QUEST AND LABCORP MENU BEFORE THEY DID THE
02:09PM 4 WALGREENS PARTNERSHIP.

02:09PM 5 Q. THANK YOU.

02:09PM 6 GOING BACK TO EXHIBIT 1404, DID YOU ALSO PUT TO MS. HOLMES
02:09PM 7 AND MR. BALWANI QUESTIONS ABOUT INTELLECTUAL PROPERTY AND
02:09PM 8 BARRIERS TO ENTRY?

02:09PM 9 A. YES.

02:09PM 10 Q. AND DID THOSE INCLUDE QUESTIONS ABOUT AN UNDERSTANDING OF
02:09PM 11 KEY PATENTS?

02:09PM 12 A. YES.

02:09PM 13 Q. IF WE CAN GO FURTHER DOWN IN THIS, DO YOU SEE THERE'S A
02:09PM 14 HEADING WALGREENS RELATIONSHIP AND COMMERCIAL STRATEGY?

02:09PM 15 DO YOU SEE THAT?

02:10PM 16 A. I DO.

02:10PM 17 Q. AND YOU WROTE, "IS THE WALGREENS RELATIONSHIP EXCLUSIVE?
02:10PM 18 CAN YOU SELL ANALYZERS TO PHYSICIANS?"

02:10PM 19 DO YOU SEE THAT?

02:10PM 20 A. YES.

02:10PM 21 Q. AND THEN IN THE NEXT BULLET, "WHAT IS THE TECHNICAL
02:10PM 22 LIMITATIONS FOR THE EXISTING ANALYZER THAT WILL BE ROLLED OUT
02:10PM 23 AS PART OF THE WALGREENS STRATEGY?"

02:10PM 24 DO YOU SEE THAT?

02:10PM 25 A. I DO, YEAH.

02:10PM 1 Q. AND WHAT DID YOU MEAN BY "ANALYZER"?

02:10PM 2 A. WELL, THIS IS -- SOMETIMES WE TRY TO ASK THE SAME
02:10PM 3 QUESTION, LIKE, SIX, SEVEN DIFFERENT TIMES OR WAYS.

02:10PM 4 SO WE'RE STILL KIND OF ASKING THE SAME -- WE WANT TO BE
02:10PM 5 CRYSTAL CLEAR THAT THERE'S NO AMBIGUITY, THERE'S NO CONFUSION
02:10PM 6 AROUND WHAT THE TECHNOLOGY CAN AND CAN'T DO.

02:10PM 7 SO THIS IS ANOTHER SIMILAR QUESTION TO THE FIRST SECTION
02:10PM 8 THAT WE WENT THROUGH.

02:10PM 9 BUT -- SO WE'RE JUST TRYING TO UNDERSTAND WHAT -- WE'RE
02:10PM 10 REALLY TRYING TO UNDERSTAND, WHAT IS THE BUSINESS MODEL HERE?
02:10PM 11 ARE YOU -- IS WALGREENS YOUR ONLY PARTNER YOU'RE EVER GOING TO
02:10PM 12 HAVE?

02:11PM 13 IS -- ARE YOU ABLE TO WORK WITH OTHER RETAILERS?

02:11PM 14 WOULD YOU EVER CONSIDER SELLING THESE DEVICES TO
02:11PM 15 PHYSICIANS?

02:11PM 16 THE REASON THAT'S AN IMPORTANT QUESTION IS COMPANIES LIKE
02:11PM 17 CEPHEID -- WE TALKED ABOUT THAT A FEW MINUTES AGO -- THAT MAKE
02:11PM 18 THE MOLECULAR TESTING SYSTEMS, THEY HAD MULTIBILLION DOLLAR
02:11PM 19 MARKET CAPS.

02:11PM 20 AND THERANOS HAD TOLD US THAT THEIR TECHNOLOGY WAS
02:11PM 21 DRAMATICALLY BETTER THAN WHAT THOSE COMPANIES WERE ABLE TO DO
02:11PM 22 AT THAT POINT IN TIME.

02:11PM 23 SO WE WANTED TO UNDERSTAND IF THEY WERE THINKING ABOUT
02:11PM 24 SELLING THESE TO -- AS A MEDICAL DEVICE COMPANY.

02:11PM 25 AND THEN ON THE WALGREENS SIDE, YOU KNOW, WHAT, WHAT IS

02:11PM 1 THE NATURE OF THE RELATIONSHIP?

02:11PM 2 SO THOSE WERE ALL REALLY KEY QUESTIONS THAT WE NEEDED TO
02:11PM 3 UNDERSTAND AT THIS POINT.

02:11PM 4 Q. OKAY. YOU WERE ASKING, "WHAT IS THE TECHNICAL LIMITATIONS
02:11PM 5 FOR THE EXISTING ANALYZER THAT WILL BE ROLLED OUT?"

02:12PM 6 AT ANY POINT DID MS. HOLMES OR MR. BALWANI TELL YOU THAT
02:12PM 7 THE THERANOS ANALYZER WAS CURRENTLY BEING USED FOR ONLY A
02:12PM 8 HANDFUL OF TESTS IN THE CLIA LAB?

02:12PM 9 A. NO.

02:12PM 10 Q. AT ANY POINT IN TIME DID THEY TELL YOU THAT THERANOS WAS
02:12PM 11 USING MODIFIED COMMERCIALLY AVAILABLE MACHINES TO PERFORM SOME
02:12PM 12 OF THE FINGERSTICK TESTS IN THE CLIA LAB?

02:12PM 13 A. NO.

02:12PM 14 Q. AT ANY POINT DID THEY TELL YOU THAT THERANOS WAS USING
02:12PM 15 COMMERCIALLY AVAILABLE MACHINES TO DO THE REMAINDER OF TESTS IN
02:12PM 16 THE CLIA LAB?

02:12PM 17 A. NO.

02:12PM 18 Q. WOULD THAT HAVE BEEN RELEVANT TO YOUR INVESTMENT DECISION?

02:12PM 19 A. IT WOULD HAVE BEEN EXTREMELY RELEVANT.

02:12PM 20 Q. HOW SO?

02:12PM 21 A. FIRST OF ALL, IT WOULDN'T HAVE MADE ANY ECONOMIC SENSE. I
02:12PM 22 MEAN, YOU CAN'T BUY EXPENSIVE THIRD PARTY EQUIPMENT AT HIGHER
02:12PM 23 PRICES THAN HUGE COMPANIES LIKE LABCORP AND QUEST, THE COST
02:12PM 24 THAT THEY WOULD PAY TO BUY THOSE BECAUSE THEY'RE A HUGE
02:12PM 25 SUPPLIER -- A HUGE CUSTOMER, AND THEN CHARGE HALF THE PRICE?

02:13PM 1 I MEAN THAT DOESN'T MAKE ANY -- WE WOULD USE THE TERM THAT
02:13PM 2 DOESN'T REALLY HAVE ANY INDUSTRIAL LOGIC TO IT. SO THAT
02:13PM 3 WOULDN'T HAVE MADE ANY SENSE.

02:13PM 4 BUT MORE THAN THAT, I MEAN, THE, THE INVESTMENT
02:13PM 5 OPPORTUNITY HERE WAS BEHIND A TECHNOLOGY THAT WAS CAPABLE OF
02:13PM 6 DOING EVERYTHING A COMMERCIAL LABORATORY OFFERED, AND TO DO IT
02:13PM 7 FASTER, TO DO IT MORE CONVENIENTLY, TO DO IT -- TO KEEP TRACK
02:13PM 8 OF YOUR DATA SO THAT A PATIENT COULD POTENTIALLY DOWN THE ROAD
02:13PM 9 IDENTIFY HEALTH ISSUES BEFORE THEY BECAME REALLY PROBLEMATIC,
02:13PM 10 AND WHERE THE PAYOR, WHETHER IT WAS AN INDIVIDUAL PAYING OUT OF
02:13PM 11 POCKET, WHETHER IT WAS AN INSURANCE COMPANY OR THE FEDERAL
02:13PM 12 GOVERNMENT WOULD BE SAVING MONEY, AND IN THE PROCESS EXPAND THE
02:13PM 13 USE OF DIAGNOSTIC TESTING.

02:13PM 14 I THINK WE ALL APPRECIATE HOW IMPORTANT, AFTER THE LAST
02:13PM 15 COUPLE YEARS OF THE PANDEMIC, HOW IMPORTANT ACCURATE DIAGNOSTIC
02:14PM 16 INFORMATION IS. THERE JUST ISN'T ENOUGH OF THAT IN OUR SYSTEM.

02:14PM 17 SO, YOU KNOW THAT WAS THE -- THAT'S WHY IT WAS SO OPEN
02:14PM 18 ENDED AND TRANSFORMATIVE AND EXCITING TO US AS INVESTORS.

02:14PM 19 Q. LET'S MOVE FORWARD TO PAGE 3, IF WE COULD, UNDER THE
02:14PM 20 WALGREENS RELATIONSHIP AND COMMERCIAL STRATEGY.

02:14PM 21 IN THE FIRST BULLET YOU WROTE, "WHAT DOES THE WALGREENS
02:14PM 22 SYSTEM COST TO PRODUCE, HOW WILL THAT CHANGE OVER TIME, AND
02:14PM 23 WHAT IS THE TRANSFER PRICING YOU HAVE AGREED TO?"

02:14PM 24 DID -- IS THIS ANOTHER QUESTION THAT YOU POSED TO
02:14PM 25 MS. HOLMES AND MR. BALWANI?

02:14PM 1 A. YES.

02:14PM 2 Q. AND WHEN YOU WERE ASKING -- WHY WERE YOU ASKING ABOUT WHAT

02:14PM 3 THE WALGREENS SYSTEM COST TO PRODUCE WAS?

02:14PM 4 A. WE JUST WANTED TO MAKE SURE THAT THE UNIT ECONOMICS TO

02:14PM 5 BOTH THERANOS AND WALGREENS MADE SENSE, THAT BOTH COMPANIES

02:14PM 6 COULD BENEFIT FROM THIS TECHNOLOGY.

02:15PM 7 AND SO UNDERSTANDING HOW THE ECONOMICS WORKED BETWEEN THE

02:15PM 8 TWO COMPANIES WAS IMPORTANT TO THE DUE DILIGENCE PROCESS.

02:15PM 9 Q. SO IF THERANOS HAD TO BUY SIEMENS MACHINES TO FULFILL SOME

02:15PM 10 OF ITS TESTING, WOULD THAT HAVE BEEN RESPONSIVE TO THIS

02:15PM 11 QUESTION?

02:15PM 12 A. THEY NEVER EXPLAINED -- THEY NEVER TALKED ABOUT BUYING ANY

02:15PM 13 THIRD PARTY EQUIPMENT IN THE CONTEXT OF ANY OF THESE QUESTIONS.

02:15PM 14 SO, YES, IT WOULD HAVE BEEN RELEVANT. IT WOULD HAVE LED

02:15PM 15 TO A WHOLE SERIES OF QUESTIONS. IT WOULD HAVE BEEN IN DIRECT

02:15PM 16 CONFLICT TO THE STATEMENTS THEY HAD ALREADY MADE THAT THERE

02:15PM 17 WERE NO LIMITATIONS, AND THAT THEY COULD REPRODUCE THE WHOLE

02:15PM 18 MENU OF TESTS.

02:15PM 19 SO IT WOULD HAVE RAISED A WHOLE BUNCH OF RED FLAGS AND

02:15PM 20 QUESTIONS AT THAT POINT IN THE DUE DILIGENCE PROCESS.

02:15PM 21 Q. IN THE NEXT BULLET YOU WROTE, "HOW DOES VALIDATION PROCESS

02:15PM 22 WORK AS YOU ROLL THIS OUT? DO ANALYZERS NEED TO BE VALIDATED

02:15PM 23 IN THE FIELD?"

02:16PM 24 AND AGAIN, WHAT DID YOU MEAN BY "ANALYZERS"?

02:16PM 25 A. THIS IS THE MINILAB, THEIR SAMPLE PROCESSING UNIT. THAT'S

02:16PM 1 WHAT ANALYZERS ARE REFERRING TO, THEIR PROPRIETARY SAMPLE
02:16PM 2 PROCESSING UNIT.

02:16PM 3 Q. AND IF WE CAN ZOOM OUT, PLEASE, MS. WACHS.

02:16PM 4 FURTHER DOWN YOU WROTE, ROUGHLY HALFWAY DOWN, "WHAT IS THE
02:16PM 5 CAP X FROM THE WALGREENS ROLLOUT? WHAT IS THE INVESTMENT ON
02:16PM 6 THE THERANOS SIDE? WHAT IS THE WALGREENS INVESTMENT?"

02:16PM 7 WHAT IS CAP X?

02:16PM 8 A. YEAH, YEAH. THAT'S A SHORT TERM THAT WE USED FOR CAPITAL
02:16PM 9 EXPENDITURES.

02:16PM 10 AND THE WAY THE ACCOUNTING RULES WORK FOR PUBLIC
02:16PM 11 COMPANIES, YOU HAVE TO -- IF YOU'RE GOING TO SPEND MONEY ON A
02:16PM 12 NEW BUILDING, OR IF YOU'RE GOING TO BUILD A NEW AREA WITHIN THE
02:16PM 13 WALGREENS STORE, OR IF YOU'RE GOING TO MAKE A MACHINE LIKE THE
02:16PM 14 THERANOS PROPRIETARY SAMPLE PROCESSING UNITS, THOSE ARE ALL
02:17PM 15 CAPITAL -- THOSE AREN'T -- YOU DON'T EXPENSE THOSE THE WAY YOU
02:17PM 16 MIGHT THINK.

02:17PM 17 THOSE ACTUALLY ARE CAPITALIZED ON THE BALANCE SHEET, AND
02:17PM 18 THEN OVER SOME PERIOD OF TIME, IT DEPENDS ON KIND OF WHAT THE
02:17PM 19 ASSET IS, IT MAY BE 2 OR 3 YEARS, IT MAY BE 10 YEARS, IT MAY BE
02:17PM 20 30 YEARS, YOU DEPRECIATE THAT CAPITAL INVESTMENT.

02:17PM 21 AND THEN THAT'S WHAT FLOWS THROUGH THE INCOME STATEMENT.

02:17PM 22 SO THIS IS IMPORTANT FOR UNDERSTANDING THE LONG-TERM
02:17PM 23 MARGINS OF THE BUSINESS.

02:17PM 24 BUT AS YOU THINK ABOUT THAT, YOUR CASH OUT OF POCKET IS
02:17PM 25 HIGHER AS YOU RAMP UP YOUR CAPITAL SPENDING, SO YOU NEED A LOT

02:17PM 1 OF CASH EVEN THOUGH IT DOESN'T FLOW THROUGH THE P&L, THE INCOME
02:17PM 2 STATEMENT RIGHT AWAY.

02:17PM 3 SO WE WANTED TO UNDERSTAND WHO IS PAYING FOR WHAT; HOW
02:17PM 4 MUCH CASH YOU'RE GOING TO NEED; HOW MUCH CASH DO YOU NEED ON
02:17PM 5 THE BALANCE SHEET TO SUCCESSFULLY COMMERCIALIZE THIS PRODUCT IN
02:17PM 6 THE RETAIL SETTING?

02:17PM 7 AND THEN WHAT IS WALGREENS GOING TO PAY FOR AND WHAT ARE
02:17PM 8 YOU GOING TO PAY FOR?

02:18PM 9 Q. SO IS THIS YOUR EFFORT TO UNDERSTAND SOME OF THE ECONOMICS
02:18PM 10 AROUND SOME THE WALGREENS AND THERANOS RELATIONSHIP?

02:18PM 11 A. YES.

02:18PM 12 Q. AND IF THERANOS WERE PURCHASING SIEMENS DEVICES TO FULFILL
02:18PM 13 THE WALGREENS ROLLOUT, WOULD THAT HAVE BEEN RESPONSIVE TO THIS
02:18PM 14 QUESTION?

02:18PM 15 A. YES.

02:18PM 16 Q. FURTHER DOWN YOU WROTE, "HOW MANY TESTS DO YOU NEED TO RUN
02:18PM 17 FOR YOU TO TURN PROFIT ON THE SYSTEM WHEN ACCOUNTING FOR THE
02:18PM 18 COST OF THE SYSTEM ITSELF?"

02:18PM 19 DO YOU SEE THAT ON THE SECOND BULLET HERE?

02:18PM 20 A. YES.

02:18PM 21 Q. IS THAT ANOTHER EFFORT FOR YOU TO TRY TO UNDERSTAND SOME
02:18PM 22 OF THE ECONOMICS BEHIND THIS?

02:18PM 23 A. YES, IT IS, AND UNDERSTAND, YOU KNOW, WHAT IS, WHAT IS THE
02:18PM 24 BREAK EVEN ON -- WHAT ARE THE ACTUAL OPERATING ECONOMICS ON THE
02:18PM 25 PROPRIETARY TECHNOLOGY.

02:18PM 1 Q. LET'S ZOOM OUT, MS. WACHS.

02:18PM 2 IF WE CAN ZOOM IN ON THE BOTTOM PORTION OF THE PAGE.

02:18PM 3 DO YOU SEE THAT YOU ALSO HAVE QUESTIONS RELATING TO

02:19PM 4 HOSPITAL MARKET, REIMBURSEMENT, AND REGULATORY?

02:19PM 5 A. YES.

02:19PM 6 Q. OKAY. AND YOUR FIRST BULLET UNDER REGULATORY WAS, "WHAT

02:19PM 7 ARE THE LIMITATIONS ON THE SYSTEM FROM THE REGULATORY

02:19PM 8 STANDPOINT?"

02:19PM 9 DO YOU SEE THAT?

02:19PM 10 A. YES.

02:19PM 11 Q. IS THAT A QUESTION THAT YOU PUT TO MS. HOLMES AND

02:19PM 12 MR. BALWANI?

02:19PM 13 A. YES.

02:19PM 14 Q. AND WHAT DID THEY SAY?

02:19PM 15 A. THEY EXPLAINED THAT AS A LAB SERVICE PROVIDER, THEY'RE

02:19PM 16 REGULATED NOT BY THE FDA DIRECTLY, BUT THEY OPERATE UNDER THE

02:19PM 17 CLIA AMENDMENTS.

02:19PM 18 AND THE CLIA AMENDMENTS ARE LAWS THAT WERE PASSED IN THE

02:19PM 19 LATE 1980S THAT SET STANDARDS FOR LABORATORY OPERATIONS, AND IF

02:19PM 20 YOU MEET THOSE STANDARDS, YOU'RE ALLOWED TO BILL THE FEDERAL

02:19PM 21 GOVERNMENT, MEDICARE, MEDICAID -- MEDICARE BEING THE PROGRAM

02:19PM 22 FOR OVER 65, AND MEDICAID BEING THE PROGRAM FOR THE CHILDREN

02:20PM 23 AND SOME OF THE LOWER INCOME OLDER POPULATIONS.

02:20PM 24 SO THEY EXPLAINED THAT THAT WAS THEIR REGULATOR.

02:20PM 25 THEY EXPLAINED THE PROCESS OF HOW THEY ARE REGULATED

02:20PM 1 WITHIN THAT. THEY HAVE TO GO THROUGH A PROFICIENCY TESTING
02:20PM 2 PROCESS WHERE THEY'RE SENT SAMPLES. THEY HAVE TO MATCH THOSE
02:20PM 3 SAMPLES ON THE PROPRIETARY TECHNOLOGY.

02:20PM 4 AND THEY TOLD US THAT THEY HAD BEEN ALREADY DOING THIS AND
02:20PM 5 THAT THEY HAD REPEATEDLY AND CONSISTENTLY ACCURATELY READ ALL
02:20PM 6 OF THOSE SAMPLES IN PROFICIENCY TESTING FOR THEIR CLIA LAB.

02:20PM 7 THEY DID, HOWEVER, SAY THAT THEY WANTED TO PURSUE A MORE
02:20PM 8 RIGOROUS, HIGHER STANDARD FOR THEIR TECHNOLOGY.

02:20PM 9 THEY ACTUALLY INTENDED TO FILE FOR FDA APPROVAL FOR ALL OF
02:20PM 10 THEIR TESTS AND ALL OF THEIR EQUIPMENT, WHICH WAS A HIGHER
02:20PM 11 STANDARD THAN THE REST OF THE LAB INDUSTRY OPERATED UNDER.

02:20PM 12 THE REST OF THE LAB INDUSTRY DIDN'T DO THAT. THEY BOUGHT
02:20PM 13 THIRD PARTY EQUIPMENT. THEY RAN THOSE WITHIN THEIR LABS, AND
02:21PM 14 THAT WAS A REGULATORY SAFE ZONE TO DO THAT.

02:21PM 15 THEY WANTED TO GO THROUGH THE WHOLE PROCESS OF GETTING FDA
02:21PM 16 APPROVAL.

02:21PM 17 SO THEY EXPLAINED TO US ACTUALLY IN THAT SECOND MEETING
02:21PM 18 THAT THEY WERE GOING TO GET ALL OF THEIR ASSAYS APPROVED.

02:21PM 19 AND I THINK -- I REMEMBER MR. BALWANI SAYING NOBODY,
02:21PM 20 NOBODY IN THIS INDUSTRY HAS EVER FILED THOUSANDS OF ASSAYS WITH
02:21PM 21 THE FDA, NOBODY.

02:21PM 22 AND IT WAS IMPORTANT BECAUSE THIS WAS GOING TO BE -- FOR
02:21PM 23 THE CONSUMER, FOR THE PHYSICIAN, YOU KNOW, THIS WOULD BE A REAL
02:21PM 24 IMPORTANT STAMP OF APPROVAL GETTING FDA APPROVAL FOR ALL OF
02:21PM 25 THESE.

02:21PM 1 THEY DIDN'T NEED THAT TO OPERATE THE BUSINESS, BUT IT WAS
02:21PM 2 SOMETHING THAT THEY INTENDED TO DO ANYWAYS.

02:21PM 3 SO THAT WAS KIND OF THE SUBSTANCE OF THE CONVERSATION
02:21PM 4 AROUND THIS.

02:21PM 5 Q. YOU MENTIONED SOMETHING CALLED PROFICIENCY TESTING.

02:21PM 6 DID MS. HOLMES AND MR. BALWANI TELL YOU THAT THEY WERE
02:21PM 7 SENDING THEIR SAMPLES TO SOME OUTSIDE PROFICIENCY TESTING
02:22PM 8 PROVIDER?

02:22PM 9 A. NO. WELL, THEY TOLD US THAT IN 2000 -- LATE 2015 OR 2016
02:22PM 10 AFTER THEY HAD HAD A MAJOR REGULATORY PROBLEM DEVELOP, THEY DID
02:22PM 11 ADMIT THAT I THINK PUBLICLY, AND THAT WAS THE FIRST TIME THAT
02:22PM 12 WE HAD HEARD OF THAT.

02:22PM 13 SO AT NO POINT IN THE DUE DILIGENCE PROCESS DID THEY
02:22PM 14 EXPLAIN THAT TO US.

02:22PM 15 Q. OKAY. LET'S GO TO PAGE 4. THERE ARE SOME QUESTIONS FOR
02:22PM 16 FINANCIAL MODEL/PROJECTIONS.

02:22PM 17 DO YOU SEE THAT?

02:22PM 18 A. YES.

02:22PM 19 Q. AND YOU WROTE, "WHAT IS THE COST OF THE WALGREENS ROLLOUT?

02:22PM 20 "WHAT IS THE CURRENT COST OF A WALGREENS ANALYZER, HOW
02:22PM 21 WILL THAT CHANGE OVER TIME?

02:22PM 22 "WHAT ARE THE OTHER SIGNIFICANT OPERATING COSTS AND HOW
02:22PM 23 WILL THEY CHANGE OVER TIME?"

02:22PM 24 DO YOU SEE THOSE QUESTIONS?

02:22PM 25 A. YES.

02:22PM 1 Q. AND IS THIS ADDITIONAL EFFORT ON YOUR PART TO TRY TO
02:23PM 2 UNDERSTAND THE ECONOMICS OF WHAT THERANOS IS OFFERING?

02:23PM 3 A. YES. AND THERE'S ANOTHER REASON WHY WE WERE ASKING THESE
02:23PM 4 QUESTIONS IS WE WERE MODELING -- WE WERE BUILDING OUR OWN
02:23PM 5 FINANCIAL MODEL.

02:23PM 6 WE WERE FORECASTING THE SALES, AN OBVIOUS THING TO DO, BUT
02:23PM 7 WE WANTED TO MAKE SURE THAT THE COST OF GENERATING THOSE
02:23PM 8 SALES -- THAT THEY NEEDED ANALYZERS IN ORDER TO GENERATE THOSE
02:23PM 9 REVENUES, SO WE WANTED TO MAKE SURE -- WE WANTED TO BE CRYSTAL
02:23PM 10 CLEAR, WHAT DO YOU NEED TO ACTUALLY SPEND? HOW MANY ANALYZERS
02:23PM 11 DO YOU NEED TO MAKE? WHAT EQUIPMENT DO YOU NEED TO BUY IN
02:23PM 12 ORDER TO DELIVER THE REVENUE THAT YOU'VE DESCRIBED IN THIS
02:23PM 13 MEETING THAT YOU'VE -- THAT YOU'RE GOING TO -- YOU'RE GOING
02:23PM 14 TO -- YOU EXPECT TO GENERATE OVER THE LIFE OF THIS PARTNERSHIP?

02:23PM 15 AND SO WE REALLY WANTED TO -- AS WE WERE MODELING THIS
02:23PM 16 OUT, WE WANTED TO UNDERSTAND EXACTLY WHAT THE CASH NEEDS OF THE
02:23PM 17 BUSINESS ARE AS THEY RAMPED THE REVENUE.

02:23PM 18 IT WASN'T JUST THE RETAIL SIDE. THEY WERE ALSO USING THE
02:23PM 19 SAME PROPRIETARY SAMPLE PROCESSING UNITS FOR THE HOSPITAL SIDE
02:24PM 20 AND THE HOSPITAL BUSINESS WHERE THEY WERE GOING TO BE REPLACING
02:24PM 21 THE HOSPITAL LABORATORIES OR DOING THE, THE INFECTIOUS
02:24PM 22 DISEASE -- THE INFECTION TESTING.

02:24PM 23 AND THEN ALSO THEY WERE GOING TO BE PROVIDING COLLECTION
02:24PM 24 DEVICES TO PHYSICIAN OFFICES.

02:24PM 25 SO WE WANTED TO MAKE SURE THAT WE HAD A VERY ACCURATE

02:24PM 1 SENSE OF WHAT THE CASH THEY WERE GOING TO HAVE TO INVEST TO
02:24PM 2 DELIVER ENOUGH EQUIPMENT TO GENERATE THE TYPE OF REVENUE THAT
02:24PM 3 THEY HOPED TO GENERATE.

02:24PM 4 SO -- AND THAT SORT OF LEADS TO THE, YOU KNOW, HOW MUCH
02:24PM 5 CASH DO YOU NEED IN THE BUSINESS TO GET TO BREAK EVEN, TO
02:24PM 6 EVENTUALLY BE PROFITABLE?

02:24PM 7 AND AS AN INVESTOR, THAT'S A STANDARD QUESTION THAT YOU
02:24PM 8 WOULD WANT TO BE ABLE TO -- OR A STANDARD THING THAT WE WOULD
02:24PM 9 WANT TO UNDERSTAND IN ANY INVESTMENT.

02:24PM 10 Q. IF THERANOS HAD BEEN USING THIRD PARTY EQUIPMENT, SAY FROM
02:25PM 11 SIEMENS, WOULD THAT HAVE BEEN RESPONSIVE TO THE QUESTIONS THAT
02:25PM 12 YOU'RE ASKING HERE ABOUT THE COST OF THE ANALYZER?

02:25PM 13 A. YOU WOULD HAVE THOUGHT THAT WOULD HAVE COME UP AT THIS
02:25PM 14 STAGE OF THE MEETING, YES.

02:25PM 15 Q. DID IT EVER COME UP?

02:25PM 16 A. NO.

02:25PM 17 Q. YOU ALSO WROTE, "WHAT ARE GM ON THE ANALYZERS, THE TESTS?"
02:25PM 18 DO YOU SEE THAT?

02:25PM 19 A. YES.

02:25PM 20 Q. AND WHAT IS GM?

02:25PM 21 A. GM IS ANOTHER ONE OF THESE SHORTHAND TERMS. THAT'S
02:25PM 22 REFERRING TO GROSS MARGIN, AND GROSS MARGIN IS JUST THE COST OF
02:25PM 23 THE MACHINE, WHAT YOU SELL THE MACHINE FOR VERSUS WHAT IT COSTS
02:25PM 24 TO MAKE THE MACHINE, THAT WOULD BE YOUR GROSS MARGIN.

02:25PM 25 AND SO WE'RE TRYING TO UNDERSTAND THE COST, LIKE, WHAT IS

02:25PM 1 THE COST OF MAKING THESE MACHINES, WHICH THEY TOLD US WAS
02:25PM 2 SOMETHING AROUND \$40,000, MAYBE A LITTLE HIGHER IN THAT ZIP
02:26PM 3 CODE, AND THEY WERE GOING TO DRIVING THAT COST DOWN TO \$10,000
02:26PM 4 TO \$15,000.

02:26PM 5 AND THEN ALSO, WHAT ARE THE COSTS OF MAKING THE ASSAYS,
02:26PM 6 THE TESTS THEMSELVES? THAT ALSO IS NOT A COSTLESS PROCESS
02:26PM 7 EITHER.

02:26PM 8 SO WE WANTED TO UNDERSTAND THE MARGINS.

02:26PM 9 AND, YOU KNOW, THIS FEEDS BACK INTO THE HIGHER THE
02:26PM 10 MARGINS, THE LESS CASH YOU'RE GOING TO NEED OVER THE NEXT
02:26PM 11 COUPLE OF YEARS TO BREAK EVEN IN PROFITABILITY.

02:26PM 12 SO I WAS JUST TRYING TO UNDERSTAND THE NATURE OF THE
02:26PM 13 BUSINESS.

02:26PM 14 Q. AND DURING THIS MEETING IN JANUARY, DID MR. BALWANI MAKE
02:26PM 15 STATEMENTS TO YOU ABOUT THE GM OF THE ANALYZERS?

02:26PM 16 A. WELL, THE, THE -- HE EXPLAINED THAT -- HE FOCUSSED ON THE
02:26PM 17 COST OF THE ANALYZERS, BECAUSE THEY WEREN'T GOING TO BE SELLING
02:26PM 18 THE ANALYZERS THEMSELVES, THEY WERE GOING TO BE USING THEM FOR
02:26PM 19 THEIR OWN LABORATORY.

02:26PM 20 SO IT WAS MORE OF THE GROSS MARGIN ON THE LABORATORY
02:26PM 21 SERVICES BUSINESS OVERALL, SO USING THESE PROPRIETARY PIECES OF
02:26PM 22 TECHNOLOGY THAT THEY WERE MAKING THEMSELVES TO PROVIDE A COST
02:26PM 23 ADVANTAGE AGAINST OTHER LABORATORIES THAT ARE BUYING THIRD
02:27PM 24 PARTY EQUIPMENT.

02:27PM 25 AND THEN OBVIOUSLY CHARGING -- THE REVENUE THAT YOU'RE

02:27PM 1 GETTING IS THE PRICE THAT YOU CHARGE THE RETAIL CUSTOMER, WHICH
02:27PM 2 IN THIS CASE WAS 50 PERCENT OF THE MEDICARE PRICE.

02:27PM 3 SO THAT WAS YOUR REVENUE.

02:27PM 4 THE COST WAS THE ANALYZERS THAT THEY WERE MAKING, AND THEN
02:27PM 5 WHAT WAS LEFT OVER WOULD HAVE BEEN THE GROSS MARGIN ON THE
02:27PM 6 RETAIL BUSINESS.

02:27PM 7 NOW, THAT SAME MATH, THEY GAVE US IN THAT FIRST MEETING --
02:27PM 8 IN THAT SECOND MEETING, THEY GAVE US MARGINS FOR ALL OF THE
02:27PM 9 BUSINESSES. THEY GAVE US MARGINS FOR THE RETAIL BUSINESS, THE
02:27PM 10 HOSPITAL BUSINESS, THE PHYSICIAN BUSINESS, THE HOSPITAL
02:27PM 11 REPLACEMENT BUSINESS. I THINK THEY EVEN HAD A MARGIN FOR THE
02:27PM 12 PHARMA SERVICE BUSINESS THEY GAVE US IN THAT FIRST MEETING.

02:27PM 13 Q. AND DID MR. BALWANI WALK YOU THROUGH ANY TYPE OF FINANCIAL
02:27PM 14 MODEL THAT THERANOS HAD PREPARED?

02:27PM 15 A. THAT WAS THE SECOND MEETING WHERE WE SAW THEIR FINANCIAL
02:27PM 16 MODEL FOR THE FIRST TIME, YES.

02:27PM 17 Q. YOU USED THE WORD "MINILAB" EARLIER. DID MS. HOLMES AND
02:28PM 18 MR. BALWANI DRAW ANY CONNECTION BETWEEN THE MINILAB AND
02:28PM 19 MAINFRAME COMPUTERS?

02:28PM 20 A. YES. THIS WAS TOWARDS THE EARLIER PART OF OUR FIRST
02:28PM 21 MEETING. THEY WANTED TO BE VERY CLEAR THAT THIS TECHNOLOGY WAS
02:28PM 22 NOT ANOTHER POINT OF CARE TEST.

02:28PM 23 POINT OF CARE TEST IS KIND OF LIKE THE HOME PREGNANCY TEST
02:28PM 24 OR NOW THE HOME COVID TEST. IT DOES ONE THING. YOU CAN BUY IT
02:28PM 25 AT THE DRUG STORE. IT'S LOW TECHNOLOGY BUT WORKS PRETTY WELL.

02:28PM 1 BUT THEY, THEY -- I THINK WE ACTUALLY MADE THE MISTAKE OF
02:28PM 2 CALLING IT A POINT OF CARE TESTING PLATFORM.

02:28PM 3 AND THEY IMMEDIATELY STOPPED, NO, NO, NO, NO. THIS IS NOT
02:28PM 4 A POINT OF CARE PRODUCT. WE HAVE TAKEN THE ENTIRE LAB AND
02:28PM 5 MINIATURIZED IT. THIS IS A MINILAB, AND THAT HAS PROFOUND
02:28PM 6 IMPLICATIONS FOR HOW WE WILL PROVIDE LABORATORY SERVICES GOING
02:29PM 7 FORWARD.

02:29PM 8 THIS IS WHERE WE GOT INTO THE, YOU KNOW, WE CAN SERVICE
02:29PM 9 THE ENTIRE PHOENIX MARKET IN A 200 SQUARE FOOT FACILITY.

02:29PM 10 BUT THE CONCEPT WAS, YOU KNOW, THIS IS PC'S VERSUS
02:29PM 11 MAINFRAMES. THIS IS, YOU KNOW, THE OLD WAY OF DOING IT VERSUS
02:29PM 12 THE NEW WAY OF DOING IT. THIS IS A DISTRIBUTED INTERCONNECTED
02:29PM 13 NETWORK OF DEVICES.

02:29PM 14 SO, YEAH, THAT WAS A VERY IMPORTANT POINT THAT THEY MADE
02:29PM 15 IN THAT SECOND MEETING.

02:29PM 16 Q. LET ME DRAW YOUR ATTENTION, MR. GROSSMAN, TO WHAT HAS BEEN
02:29PM 17 MARKET AS EXHIBIT 1422.

02:29PM 18 THE COURT: WHILE MR. GROSSMAN FINDS THAT, LADIES
02:29PM 19 AND GENTLEMEN, WOULD YOU STAND UP AND STRETCH FOR JUST A
02:29PM 20 MOMENT.

02:29PM 21 (STRETCHING.)

02:30PM 22 MR. LEACH: MAY I INQUIRE?

02:30PM 23 Q. MR. GROSSMAN, IS THIS AN EMAIL EXCHANGE BETWEEN YOU AND
02:30PM 24 MR. BALWANI DATED JANUARY 14TH, 2014?

02:30PM 25 A. IF I COULD JUST HAVE A MINUTE TO REVIEW IT?

02:30PM 1 Q. SURE.

02:30PM 2 A. YES, IT IS.

02:30PM 3 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

02:30PM 4 EXHIBIT 1422.

02:30PM 5 MS. WALSH: NO OBJECTION.

02:30PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:30PM 7 (GOVERNMENT'S EXHIBIT 1422 WAS RECEIVED IN EVIDENCE.)

02:30PM 8 BY MR. LEACH:

02:30PM 9 Q. AND IF WE CAN START ON PAGE 2, MS. WACHS.

02:31PM 10 DOWN AT THE BOTTOM, MR. GROSSMAN, DO YOU SEE AN EMAIL

02:31PM 11 DATED JANUARY 10TH, 2014 FROM YOU TO MR. BALWANI?

02:31PM 12 A. YES.

02:31PM 13 Q. AND YOU WROTE, "THANKS AGAIN FOR THE TIME YOU SPENT WITH

02:31PM 14 OUR TEAM WALKING US THROUGH THE THERANOS STORY."

02:31PM 15 DO YOU SEE THAT?

02:31PM 16 A. YES.

02:31PM 17 Q. IS THAT A REFERENCE TO THE MEETING THAT YOU HAD WITH

02:31PM 18 MS. HOLMES AND MR. BALWANI IN PALO ALTO?

02:31PM 19 A. YES.

02:31PM 20 Q. YOU THEN WROTE, "WE WILL LIKELY NEED A FEW DAYS TO PROCESS

02:31PM 21 EVERYTHING WE LEARNED TODAY. ONE THING THAT WOULD BE

02:31PM 22 ESPECIALLY HELPFUL TO OUR DUE DILIGENCE PROCESS IS HAVING

02:31PM 23 ACCESS TO THE FINANCIAL MODEL WE REVIEWED WITH YOU TODAY."

02:31PM 24 DO YOU SEE THAT?

02:31PM 25 A. YES.

02:31PM 1 Q. WHAT DID YOU MEAN BY THAT?

02:31PM 2 A. WE WANTED, WE WANTED A WORKABLE MICROSOFT EXCEL VERSION OF
02:31PM 3 THE MODEL THAT THEY SHOWED US ON I THINK IT WAS A LAPTOP IN
02:31PM 4 THAT, IN THAT MEETING, SECOND MEETING IN EARLY JANUARY.

02:31PM 5 Q. OKAY. AND IF WE COULD ZOOM OUT, THERE'S A REPLY FROM
02:32PM 6 MR. BALWANI AT THE TOP.

02:32PM 7 DO YOU SEE WHERE HE COMMITS TO SENDING YOU THE MODEL OVER
02:32PM 8 THE WEEKEND?

02:32PM 9 A. YES.

02:32PM 10 Q. OKAY. AND LET'S GO TO PAGE 1, MS. WACHS.

02:32PM 11 AND IF WE CAN FOCUS ON THE BOTTOM PORTION OF THE EMAIL
02:32PM 12 FROM MR. GROSSMAN ON MONDAY, JANUARY 13TH.

02:32PM 13 YOU WROTE AGAIN, "SUNNY,

02:32PM 14 "WE ARE VERY INTERESTED IN MOVING FORWARD."

02:32PM 15 DO YOU SEE THAT?

02:32PM 16 A. YES.

02:32PM 17 Q. AND THAT WAS ACCURATE AT THE TIME?

02:32PM 18 A. YES.

02:32PM 19 Q. IN THE THIRD PARAGRAPH YOU WROTE, "BEYOND THAT THE WAG
02:32PM 20 ENDORSEMENT OBVIOUSLY SPEAKS TO THE STRENGTH AND ROBUSTNESS OF
02:32PM 21 THE TECHNOLOGY PLATFORM. AS DOES THE UNH AGREEMENT YOU HAVE IN
02:32PM 22 PLACE. DO YOU THINK WE COULD HAVE A QUICK CONVERSATION WITH
02:32PM 23 SOMEBODY AT WAG AND UNH WHO CAN SPEAK SPECIFICALLY TO THE
02:32PM 24 TECHNICAL DUE DILIGENCE THEY PERFORMED?"

02:32PM 25 DO YOU SEE THAT?

02:33PM 1 A. YES.

02:33PM 2 Q. AND WHAT IS UNH?

02:33PM 3 A. UNH IS THE SHORTHAND, IT'S THE STOCK SYMBOL TICKER FOR

02:33PM 4 UNITED HEALTH CARE.

02:33PM 5 Q. AND WAG IS A REFERENCE TO WALGREENS?

02:33PM 6 A. THAT'S CORRECT. THAT'S A REFERENCE -- THAT'S THE TICKER

02:33PM 7 AT THE TIME. IT'S ACTUALLY CHANGED. IT'S NOW WBA.

02:33PM 8 BUT AT THE TIME IT WAS WAG WAS THE TICKER FOR WALGREENS.

02:33PM 9 Q. AND WHY WERE YOU INTERESTED IN SPEAKING TO SOMEBODY AT WAG

02:33PM 10 AND UNH?

02:33PM 11 A. WELL, THEY -- IN THE SECOND MEETING, THERANOS EXPLAINED TO

02:33PM 12 US THAT THEY HAD CONTRACTS, THEY HAD AGREEMENTS WITH BOTH THE

02:33PM 13 BLUE CROSS, BLUE SHIELD ORGANIZATION, THAT'S THE NON FOR

02:33PM 14 PROFIT -- EVERY STATE HAS A NON FOR PROFIT

02:33PM 15 BLUE CROSS, BLUE SHIELD HEALTH PLAN. THERE'S A PARENT

02:33PM 16 ORGANIZATION THAT SITS ABOVE THAT, AND THEY EXPLAINED THAT THAT

02:34PM 17 PARENT ORGANIZATION HAD INVESTED IN THERANOS AND THAT, AS A

02:34PM 18 RESULT OF THE RELATIONSHIP WITH THE PARENT

02:34PM 19 BLUE CROSS, BLUE SHIELD, THEY HAD CONTRACTS WITH ALL OF THE --

02:34PM 20 COMMERCIAL CONTRACTS TO BE REIMBURSED TO BE PAID FOR LAB

02:34PM 21 SERVICES WITH ALL OF THE BLUES PLANS.

02:34PM 22 AND THEN THEY EXPLAINED THAT THEY HAD A SIMILAR CONTRACT

02:34PM 23 WITH UNITED HEALTH CARE, WHICH FOR US WAS VERY SURPRISING

02:34PM 24 BECAUSE UNITED HEALTH CARE GOES THROUGH THIS REALLY PUBLIC

02:34PM 25 PROCESS OF BIDDING THEIR LAB SERVICES OUT TO ONE PROVIDER, AND

02:34PM 1 I THINK AT THIS POINT LABCORP WAS THE ONE PROVIDER THAT THEY
02:34PM 2 CHOSE.

02:34PM 3 AND SO WE WERE SURPRISED THAT THEY WERE ABLE TO GET A
02:34PM 4 CONTRACT WITH UNITED, AND THE COMPANY EXPLAINED TO US THAT IT
02:34PM 5 WAS BECAUSE THEIR TECHNOLOGY WAS SO DIFFERENT, IT WAS SO MUCH
02:34PM 6 BETTER, FASTER.

02:34PM 7 YOU KNOW, THERE WAS A CONTRACTUAL OUT. IT ALLOWED UNITED
02:34PM 8 HEALTH CARE TO CONTRACT WITH THEM.

02:34PM 9 AND THAT THERE WAS A LOT OF SLIPPAGE, THERE WAS A LOT OF
02:35PM 10 STUFF THAT DIDN'T GO THROUGH LABCORP THAT COST UNITED HEALTH
02:35PM 11 CARE MORE MONEY, THEY HAD TO PAY HIGHER RATES FOR THAT.

02:35PM 12 SO WE WANTED TO SPEAK TO SOMEBODY AT UNITED HEALTH CARE
02:35PM 13 THAT WAS INVOLVED IN THE DEAL. IT WAS A PUBLIC COMPANY, SO WE
02:35PM 14 CAN'T JUST -- YOU KNOW, WE HAVE TO BE CAREFUL FROM A COMPLIANCE
02:35PM 15 STANDPOINT. WE CAN'T JUST BE CALLING RANDOM PEOPLE UP.

02:35PM 16 WE HAVE TO BE VERY CAREFUL ABOUT THE RULES OF HOW YOU
02:35PM 17 INTERACT WITH PUBLIC COMPANIES.

02:35PM 18 SO WE WERE HOPING THAT THERANOS WOULD PROVIDE US SOMEBODY
02:35PM 19 AT UNITED HEALTH CARE WHO COULD SPEAK TO THEIR PROCESS, HOW
02:35PM 20 THEY CAME TO FIND THE COMPANY, HOW THIS IS GOING TO WORK WITH
02:35PM 21 UNITED HEALTH CARE FROM THAT STANDPOINT.

02:35PM 22 OBVIOUSLY WALGREENS WAS THE BIG RETAIL PARTNERSHIP, AND AT
02:35PM 23 THAT POINT IN TIME IT HAD BEEN PUBLICLY ANNOUNCED IN THE FALL
02:35PM 24 OF '13, AND SO WE WANTED TO SPEAK TO SOMEONE AT WALGREENS
02:35PM 25 BESIDES THE CEO, CFO, THOSE C-SUITE EXECUTIVES WHO HAD MADE

02:36PM 1 PUBLIC STATEMENTS.

02:36PM 2 WE WERE LOOKING FOR SOMEONE KIND OF MIDDLE OF THE
02:36PM 3 ORGANIZATION THAT WAS MORE INVOLVED IN BUSINESS DEVELOPMENT OR
02:36PM 4 HAD BEEN KIND OF INVOLVED IN THIS, IN THE DEAL, PUTTING THE
02:36PM 5 DEAL TOGETHER.

02:36PM 6 Q. HOW DID MR. BALWANI RESPOND TO THIS REQUEST TO SPEAK TO
02:36PM 7 SOMEBODY FROM WAG AND UNITED HEALTH CARE?

02:36PM 8 A. YEAH. HE, HE -- SO THIS WAS A PHONE CALL SUBSEQUENT TO
02:36PM 9 THIS EMAIL, AND HE WAS -- HE WAS VERY UNCOMFORTABLE WITH EITHER
02:36PM 10 OF THOSE, EITHER OF THOSE.

02:36PM 11 HE, HE FELT THAT IT WOULD LOOK WEIRD, IT WOULD -- THEY HAD
02:36PM 12 A GREAT RELATIONSHIP, AND IT WOULD MAKE THEM LOOK BAD. YOU
02:36PM 13 KNOW, HE WAS UNCOMFORTABLE. THEY WOULDN'T WANT TO TALK TO
02:36PM 14 INVESTORS.

02:36PM 15 AND SO, YOU KNOW, HE BASICALLY SHUT IT DOWN. HE SAID, NO,
02:36PM 16 WE'RE NOT WILLING TO DO THAT.

02:36PM 17 HE DID OFFER TO SHOW US THE SIGNATURE PAGE OF THE
02:37PM 18 WALGREENS -- I'M SORRY, THE UNITED HEALTH CARE CONTRACT THAT
02:37PM 19 THEY HAD SIGNED SO THAT HE COULD PROVE TO US THAT THERE WAS IN
02:37PM 20 FACT AN ACTUAL DOCUMENT.

02:37PM 21 SO HE WAS WILLING TO BRING THAT INTO A CONFERENCE ROOM
02:37PM 22 THAT WE COULD SEE.

02:37PM 23 BUT HE, HE -- YOU KNOW, HE WAS UNWILLING TO GRANT US THIS,
02:37PM 24 EITHER OF THESE REQUESTS.

02:37PM 25 Q. AND THIS IS DATED JANUARY 13TH, 2014.

02:37PM 1 LET ME MOVE FORWARD IN TIME TO JANUARY 17TH, 2014, AND
02:37PM 2 DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS EXHIBIT 4077.

02:37PM 3 DO YOU HAVE THAT IN FRONT OF YOU?

02:37PM 4 A. YEAH. SORRY.

02:37PM 5 Q. IS THIS AN EMAIL FROM MR. BALWANI TO YOU DATED
02:37PM 6 JANUARY 17TH, 2014?

02:38PM 7 A. YES.

02:38PM 8 Q. AND DOES IT ATTACH A LENGTHY POWERPOINT WITH INFORMATION
02:38PM 9 RELATING TO THERANOS?

02:38PM 10 A. YES, IT DOES.

02:38PM 11 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
02:38PM 12 EXHIBIT 4077.

02:38PM 13 MS. WALSH: NO OBJECTION.

02:38PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:38PM 15 (GOVERNMENT'S EXHIBIT 4077 WAS RECEIVED IN EVIDENCE.)

02:38PM 16 MR. LEACH: LET'S ZOOM IN ON THE TOP HALF, IF WE
02:38PM 17 COULD, MS. WACHS.

02:38PM 18 Q. MR. GROSSMAN, DO YOU SEE WHERE MR. BALWANI WROTE, "BRIAN.

02:38PM 19 "ATTACHED PLEASE FIND A PDF WHICH IS A VERY CONFIDENTIAL
02:38PM 20 SLIDE DECK OF DISCUSSIONS WE HAD."

02:38PM 21 DO YOU SEE THAT?

02:38PM 22 A. YES.

02:38PM 23 Q. "IT ALSO INCLUDES A VERY DETAILED SECTION ON DATA WHICH
02:38PM 24 ALEX HAD REQUESTED."

02:38PM 25 IS ALEX A REFERENCE TO MR. RABODZEY?

02:38PM 1 A. YES.

02:38PM 2 Q. AND THEN THERE IS SOME PASSWORD INFORMATION TO OPEN UP THE

02:38PM 3 FILE?

02:38PM 4 A. YES.

02:38PM 5 Q. AND FURTHER BELOW HE SAYS, "WE WILL MAIL YOU THE

02:39PM 6 PROJECTIONS/FINANCIAL MODEL SHORTLY."

02:39PM 7 DO YOU SEE THAT?

02:39PM 8 A. YES.

02:39PM 9 Q. AND THE POWERPOINT THAT IS ATTACHED TO THIS, IS THIS

02:39PM 10 SOMETHING THAT YOU AND YOUR TEAM REVIEWED?

02:39PM 11 A. YES.

02:39PM 12 Q. AND WAS IT RELEVANT TO PFM'S INVESTMENT DECISION?

02:39PM 13 A. YES.

02:39PM 14 Q. OKAY. I'D LIKE TO WALK THROUGH SOME OF THE PAGES OF THE

02:39PM 15 POWERPOINT WITH YOU IF WE COULD.

02:39PM 16 A. OKAY.

02:39PM 17 Q. AND LET'S JUST START ON PAGE 3.

02:39PM 18 A. DO YOU WANT ME TO FLIP OR DO YOU WANT TO PUT IT ON THE

02:39PM 19 SCREEN?

02:39PM 20 Q. WE'LL PUT IT ON THE SCREEN, AND IF YOU WANT TO FLIP

02:39PM 21 THROUGH, YOU'RE ALSO ABLE TO DO THAT.

02:39PM 22 DO YOU SEE THE TITLE THERANOS?

02:39PM 23 A. YES.

02:39PM 24 Q. AND IT SAYS, "THIS PRESENTATION AND ITS CONTENTS ARE

02:39PM 25 THERANOS PROPRIETARY AND CONFIDENTIAL," BELOW?

02:39PM

1

A. YES.

02:39PM

2

Q. OKAY. LET'S DISPLAY IF WE COULD, MS. WACHS, PAGE 67.

02:40PM

3

02:40PM

4

MR. GROSSMAN, DO YOU SEE IN THE UPPER LEFT THERE'S THE
TITLE -- WELL, IN THE TOP LEFT IT SAYS, OVERVIEW: THERANOS

02:40PM

5

SYSTEMS.

02:40PM

6

02:40PM

7

AND THEN TO THE LEFT IN A BOX OF THERANOS SYSTEMS, THERE'S
AN IMAGE OF TWO DEVICES.

02:40PM

8

DO YOU SEE THAT?

02:40PM

9

A. YES.

02:40PM

10

Q. AND WHAT DID YOU UNDERSTAND THOSE TO BE?

02:40PM

11

02:40PM

12

A. THOSE WERE THE MINILABS. THE ONE ON THE LEFT WAS THE
MINILAB, THE RETAIL PRODUCT THAT THEY WERE BUILDING AND USING

02:40PM

13

IN THEIR CLIA LABS.

02:40PM

14

02:40PM

15

I THINK THE ONE ON THE RIGHT WAS THE OLDER, OLDER VERSION
THAT THEY USED IN CLINICAL TRIALS I THINK.

02:40PM

16

Q. AND DO THESE BEAR RESEMBLANCE TO THE DEVICES THAT

02:40PM

17

MR. BALWANI SHOWED YOU?

02:40PM

18

A. YES.

02:40PM

19

Q. AT ANY POINT IN TIME DID MR. BALWANI SHOW YOU SIEMENS

02:40PM

20

MACHINES?

02:40PM

21

A. NO.

02:40PM

22

Q. DID HE EVER TELL YOU THAT THERANOS SYSTEMS INCLUDED

02:40PM

23

SIEMENS MACHINES?

02:40PM

24

A. NO.

02:40PM

25

Q. TO THE RIGHT THERE'S AN IMAGE -- OR THE WORDS "CARTRIDGES"

02:40PM 1 AND THEN AN IMAGE.

02:41PM 2 WHAT DID YOU UNDERSTAND THIS TO BE?

02:41PM 3 A. THESE WERE THE -- THESE ARE THE ASSAYS. THESE ARE THE,
02:41PM 4 THESE ARE THE REAL ESTATE WHERE THE ASSAYS RESIDE, WHICH ARE
02:41PM 5 THEN LOADED INTO THE ANALYZERS.

02:41PM 6 Q. AND TO THE RIGHT, OR IN THE BOX BELOW, IT SAYS THERANOS
02:41PM 7 SYSTEMS: BACKEND ANALYTICAL INFRASTRUCTURE.

02:41PM 8 DO YOU SEE THAT?

02:41PM 9 A. YES.

02:41PM 10 Q. AND WHAT DID YOU UNDERSTAND TO BE CONVEYED HERE?

02:41PM 11 A. THIS IS THE WHOLE IDEA THAT THEY'RE GOING TO ACTUALLY CARE
02:41PM 12 ABOUT THE PATIENT AND THE DATA THAT THEY GENERATE FROM PATIENTS
02:41PM 13 AND USE IT -- FIRST OF ALL, KEEP TRACK OF IT SO THAT, AS A
02:41PM 14 PATIENT, YOU COULD HAVE ACCESS TO YOUR DATA OVER TIME
02:41PM 15 CONVENIENTLY THROUGH A MOBILE APP OR A WEB PAGE.

02:41PM 16 AND THEN THEY WERE GOING TO DEVELOP ANALYTICS AROUND THAT
02:42PM 17 DATA THAT HELPED PROMOTE BETTER HEALTH OUTCOMES THAT COULD
02:42PM 18 IDENTIFY SOMEBODY WHO IS LIKELY TO HAVE A MEDICAL CONDITION
02:42PM 19 BEFORE IT WOULD SHOW UP IN THE CURRENT MEDICAL DIAGNOSTIC
02:42PM 20 PARADIGM.

02:42PM 21 AND SO THAT REQUIRED A WHOLE -- AND ACTUALLY,
02:42PM 22 MR. BALWANI -- THIS WAS PARTICULARLY AN IMPORTANT AREA TO HIM
02:42PM 23 COMING FROM THE SOFTWARE WORLD AND HIS TIME I THINK AT
02:42PM 24 MICROSOFT.

02:42PM 25 SO THIS WAS AN IMPORTANT ASPECT OF THEIR LONGER TERM

02:42PM 1 STRATEGY.

02:42PM 2 Q. AND LET'S GO BACK ONE PAGE TO PAGE 66.

02:42PM 3 DO YOU SEE THE HEADING PRODUCTS, MR. GROSSMAN?

02:42PM 4 A. YES.

02:42PM 5 Q. AND THE FIRST TEXT UNDERNEATH THAT SAYS, "DEVICE.

02:43PM 6 "MINILAB AND 4S FOR AUTOMATED PROCESSING."

02:43PM 7 DO YOU SEE THAT?

02:43PM 8 A. YES.

02:43PM 9 Q. AND IS THAT CONSISTENT WITH STATEMENTS THAT MR. BALWANI

02:43PM 10 AND MS. HOLMES MADE TO YOU ABOUT THE DEVICE THAT THERANOS WAS

02:43PM 11 USING?

02:43PM 12 A. YES.

02:43PM 13 Q. AT ANY POINT IN TIME DID THEY MENTION SIEMENS MACHINES?

02:43PM 14 A. NO.

02:43PM 15 Q. BENEATH THAT IT SAYS, "CARTRIDGE.

02:43PM 16 "AUTOMATED CONSUMABLES FOR 75 PLUS ASSAYS SIMULTANEOUSLY

02:43PM 17 ACROSS ALL SAMPLE TYPES (BLOOD, URINE, TISSUE, ET CETERA) ."

02:43PM 18 AND DID YOU UNDERSTAND THAT THERANOS WAS USING AUTOMATED

02:43PM 19 CONSUMABLES FOR 75 PLUS ASSAYS AT THE TIME?

02:43PM 20 A. THEY ACTUALLY TOLD US IN OUR MEETING THAT IT WAS 75, BUT,

02:43PM 21 YES, THAT'S KIND OF ROUGHLY -- THAT'S ROUGHLY ACCURATE.

02:43PM 22 Q. OKAY. AND THEN THERE'S A LINE FOR "BLOOD COLLECTION

02:43PM 23 DEVICES."

02:43PM 24 DO YOU SEE THAT?

02:43PM 25 A. YES.

02:43PM

1

Q. "AUTOMATED SAMPLE COLLECTION FOR MICRO SAMPLE VOLUMES

02:43PM

2

(BLOOD, URINE, TISSUE, ET CETERA) CUSTOMIZED FOR PEDIATRICS,

02:44PM

3

PHLEBOTOMY, AND A FULL RANGE OF COLLECTION PROCEDURES."

02:44PM

4

WHAT DID YOU UNDERSTAND THIS TO BE GETTING AT?

02:44PM

5

A. THIS WAS THEIR OWN PROPRIETARY COLLECTION TECHNOLOGY,

02:44PM

6

THE -- THEY CALLED IT -- SORRY.

02:44PM

7

THEY REFERRED TO IT AS THE NANOTAINER, A VACUTAINER IS

02:44PM

8

SORT OF THE, IT'S KIND OF LIKE A -- THERE'S A COMPANY THAT

02:44PM

9

MARKETS THE VACUTAINER I THINK IS THEIR TRADE NAME, SO I THINK

02:44PM

10

THEY WERE USING THAT AS A -- SO IT WAS A NAME THAT PHYSICIANS

02:44PM

11

AND PHLEBOTOMISTS WERE FAMILIAR WITH.

02:44PM

12

SO THEY HAD THEIR NANOTAINER, AND THEN THEY HAD THEIR OWN

02:44PM

13

SMALL COLLECTION DEVICES FOR BLOOD DRAWS.

02:44PM

14

Q. THEN IT SAYS, "ASSAYS.

02:44PM

15

"CHEMISTRIES, 800 PLUS 10 MENU, AND TPS LIBRARY."

02:44PM

16

WHAT DID YOU UNDERSTAND THAT TO MEAN?

02:44PM

17

A. THAT THIS IS JUST THE TESTS THAT THEY'RE GOING TO BE

02:45PM

18

OFFERING ON THEIR PROPRIETARY TECHNOLOGY.

02:45PM

19

Q. AND WAS THE INFORMATION ON THIS SLIDE RELEVANT TO PFM'S

02:45PM

20

INVESTMENT DECISION?

02:45PM

21

A. IT WAS CONSISTENT WITH WHAT THEY TOLD US IN OUR MEETING,

02:45PM

22

YES.

02:45PM

23

Q. LET'S GO BACK TO PAGE 8 IF WE COULD, MS. WACHS.

02:45PM

24

DO YOU SEE THE HEADING "PRESS," MR. GROSSMAN?

02:45PM

25

A. YES.

02:45PM 1 Q. AND THERE'S AN IMAGE OF SOMETHING FROM "THE
02:45PM 2 WALL STREET JOURNAL" THAT SAYS "ELIZABETH HOLMES: THE
02:45PM 3 BREAKTHROUGH OF INSTANT DIAGNOSIS."

02:45PM 4 DO YOU SEE THAT?

02:45PM 5 A. YES.

02:45PM 6 Q. AND IT APPEARS TO BE WRITTEN BY SOMEONE NAMED JOSEPH RAGO?

02:45PM 7 A. YES.

02:45PM 8 Q. IS THIS SOMETHING THAT YOU WOULD HAVE REVIEWED AND
02:45PM 9 CONSIDERED AT THE TIME?

02:45PM 10 A. YES.

02:45PM 11 Q. AND THERE'S A LINE ON THIS SLIDE RIGHT ABOVE THE CARTOON
02:45PM 12 IMAGE WHERE IT SAYS, "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE
02:45PM 13 NOW REFINING."

02:45PM 14 MAYBE IF WE CAN ZOOM IN A LITTLE BIT MORE ON THAT,
02:46PM 15 MS. WACHS.

02:46PM 16 "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE NOW REFINING
02:46PM 17 INVOLVES DEVICES THAT AUTOMATE AND MINIATURIZE MORE THAN 1,000
02:46PM 18 LABORATORY TESTS."

02:46PM 19 DO YOU SEE THAT LANGUAGE?

02:46PM 20 A. YES.

02:46PM 21 Q. IS THAT CONSISTENT WITH STATEMENTS THAT MS. HOLMES AND
02:46PM 22 MR. BALWANI MADE TO YOU?

02:46PM 23 A. VERY.

02:46PM 24 Q. OKAY. LET'S LOOK AT PAGE 9.

02:46PM 25 DO YOU SEE THE HEADING "PRESS"?

02:46PM 1 A. YES.

02:46PM 2 Q. AND THERE APPEARS TO BE EXCERPTS OF A PRESS RELEASE TITLED

02:46PM 3 "THERANOS SELECTS WALGREENS AS A LONG-TERM PARTNER THROUGH

02:46PM 4 WHICH TO OFFER ITS NEW CLINICAL LABORATORY SERVICE."

02:46PM 5 DO YOU SEE THAT?

02:46PM 6 A. I DO.

02:46PM 7 Q. AND WAS THIS INFORMATION THAT YOU CONSIDERED AT THE TIME

02:46PM 8 OF YOUR INVESTMENT?

02:46PM 9 A. YES.

02:46PM 10 Q. AND WAS THIS RELEVANT TO YOU?

02:46PM 11 A. YES, IT WAS.

02:46PM 12 Q. AND THERE'S A LINE RIGHT BEFORE "PALO ALTO, CALIFORNIA AND

02:47PM 13 DEERFIELD, ILLINOIS."

02:47PM 14 "WITH FIRST LOCATION LAUNCHING THIS MONTH IN

02:47PM 15 SILICON VALLEY, CONSUMERS CAN NOW COMPLETE ANY

02:47PM 16 CLINICIAN-DIRECTED LAB TEST WITH AS LITTLE AS A FEW DROPS OF

02:47PM 17 BLOOD AND RESULTS AVAILABLE IN A MATTER OF HOURS."

02:47PM 18 DO YOU SEE THAT?

02:47PM 19 A. YES.

02:47PM 20 Q. AND IS THAT CONSISTENT WITH STATEMENTS MS. HOLMES AND

02:47PM 21 MR. BALWANI MADE TO YOU IN YOUR MEETINGS WITH THEM?

02:47PM 22 A. YES.

02:47PM 23 Q. LET'S GO TO PAGE 17, PLEASE.

02:47PM 24 DO YOU SEE THE HEADING, "SAME TESTS, A WHOLE NEW

02:47PM 25 APPROACH"?

02:47PM

1

A. YES.

02:47PM

2

Q. AND DO YOU SEE SOME IMAGES OF A FINGER AND A RED DOT AND SOME TYPE OF TUBE?

02:47PM

3

A. I DO.

02:47PM

4

Q. AND WHAT DID YOU UNDERSTAND TO BE DISPLAYED HERE?

02:47PM

5

A. THIS IS THE ACTUAL PROCESS OF GETTING THE -- TAKING THE

02:47PM

6

SAMPLE FROM A FINGER, AND ON THE RIGHT YOU CAN SEE THE

02:48PM

7

NANOTAINER, WHICH IS THE DEVICE THAT THE BLOOD IS STORED IN AS IT'S TRANSPORTED FROM THE COLLECTION SITE TO THE ANALYSIS SITE.

02:48PM

8

Q. AND THIS SAYS, "THERANOS RUNS ANY TEST AVAILABLE IN CENTRAL LABORATORIES, AND PROCESSES ALL SAMPLE TYPES."

02:48PM

10

Q. AND THIS SAYS, "THERANOS RUNS ANY TEST AVAILABLE IN

02:48PM

11

WAS THAT RELEVANT INFORMATION TO YOU?

02:48PM

12

A. YES.

02:48PM

13

Q. AND THEN AT THE BOTTOM IT SAYS, "THERANOS PROVIDES THE

02:48PM

14

HIGHEST LEVEL OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN

02:48PM

15

OUR PRE- AND POST-ANALYTIC PROCESSES, ENSURING THE HIGHEST

02:48PM

16

LEVELS OF ACCURACY AND PRECISION."

02:48PM

17

WAS THAT RELEVANT TO YOU?

02:48PM

18

A. YES.

02:48PM

19

Q. LET'S LOOK AT THE NEXT PAGE, PAGE 18.

02:48PM

20

DO YOU SEE THE HEADING, "SPECIALIZED FOR EVERY SPECIALTY"?

02:48PM

21

A. YES.

02:49PM

22

Q. AND BENEATH THAT DO YOU SEE WHERE IT SAYS, "THERANOS IS A NEW STANDARD IN LAB TESTING THAT CAN HELP EVERY PRACTICE. AND

02:49PM

23

WE OFFER EVEN MORE SPECIALIZED TOOLS FOR PATIENTS WITH SPECIFIC

02:49PM

25

02:49PM

1

NEEDS."

02:49PM

2

DO YOU SEE THAT?

02:49PM

3

A. I DO, YES.

02:49PM

4

Q. OKAY. I'D LIKE TO ZOOM IN, IF WE CAN, MS. WACHS, ON THE

02:49PM

5

TEXT UNDERNEATH PEDIATRICS AND GERIATRICS.

02:49PM

6

UNDER PEDIATRICS, MR. GROSSMAN, DO YOU SEE WHERE IT SAYS,

02:49PM

7

"BUT SINCE WE ONLY REQUIRE TINY DROPS, OUR TESTS ARE LESS

02:49PM

8

TRAUMATIC, GIVING YOU MORE SMILES AND FEWER TEARS."

02:49PM

9

IS THAT CONSISTENT WITH STATEMENTS THAT MR. BALWANI MADE

02:49PM

10

TO YOU?

02:49PM

11

A. YES.

02:49PM

12

Q. AND TO THE RIGHT UNDER GERIATRICS IT SAYS, "NO MORE

02:49PM

13

SEARCHING FOR VEINS. NO MORE PAINFUL DRAWS FROM THE KNUCKLE OR

02:49PM

14

BACK OF THE HAND."

02:49PM

15

DO YOU SEE THAT?

02:49PM

16

A. YES.

02:49PM

17

Q. IS THAT CONSISTENT WITH STATEMENTS THAT MR. BALWANI MADE

02:49PM

18

TO YOU PRIOR TO YOUR INVESTMENT?

02:49PM

19

A. YES.

02:49PM

20

Q. AND WAS THIS SIGNIFICANT TO YOU?

02:50PM

21

A. YES, IT WAS, BECAUSE THIS IS PART OF THE REASON WHY THE

02:50PM

22

MARKET FOR LAB SERVICES COULD EXPAND DRAMATICALLY WITH THE

02:50PM

23

TECHNOLOGY LIKE THIS, WHICH IS SOMETHING THAT THEY TALKED ABOUT

02:50PM

24

ACTUALLY IN THE SECOND MEETING. THE MARKET FOR DIAGNOSTIC

02:50PM

25

TESTING COULD EASILY DOUBLE WITH A PRODUCT, A TECHNOLOGY LIKE

02:50PM 1 THIS THAT WOULD BE ABLE TO -- YOU KNOW, WHERE A LOT OF TESTS
02:50PM 2 JUST UNFORTUNATELY AREN'T DONE BECAUSE IT'S PAINFUL, BECAUSE
02:50PM 3 IT'S SCARY.

02:50PM 4 I MEAN, I HAD TO CHASE MY DAUGHTER AROUND THE BACKYARD TO
02:50PM 5 GET A LAB AND TO GET HER TO TAKE BLOOD ONCE. I MEAN, IT'S A
02:50PM 6 REAL ISSUE.

02:50PM 7 SO, YES, THIS -- IT WAS VERY -- AND OBVIOUSLY IT'S -- YOU
02:50PM 8 KNOW, ANY TIME YOU HAVE A PRODUCT THAT IS BETTER, FASTER,
02:50PM 9 CHEAPER, MORE ACCURATE, YOU KNOW, THAT'S, THAT'S ALWAYS A -- AN
02:50PM 10 ATTRACTIVE -- THOSE ARE VERY ATTRACTIVE CHARACTERISTICS FOR ANY
02:50PM 11 NEW TYPE TECHNOLOGY RELATIVE TO WHAT THE EXISTING INCUMBENT
02:51PM 12 PRODUCT'S TECHNOLOGIES ARE LIKE.

02:51PM 13 Q. LET'S GO TO THE NEXT PAGE, PAGE 19.

02:51PM 14 DO YOU SEE THE HEADING "FASTER RESULTS. FASTER ANSWERS"?

02:51PM 15 A. YES.

02:51PM 16 Q. AND IN THE MIDDLE IT SAYS, "4 HOURS OR LESS"?

02:51PM 17 A. YES.

02:51PM 18 Q. IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:51PM 19 A. THIS ALSO CAME UP IN THAT SECOND MEETING, YES. THEY
02:51PM 20 TALKED ABOUT THE 4 HOUR TURN-AROUND TIME.

02:51PM 21 Q. OKAY. LET'S LOOK AT PAGE 21, PLEASE.

02:51PM 22 DO YOU SEE THE HEADING "A NEW STANDARD IN QUALITY.

02:51PM 23 "THE HIGHEST LEVELS IN ACCURACY"?

02:51PM 24 A. YES.

02:51PM 25 Q. AND THEN THERE'S A CIRCLE, "LESS THAN 10 PERCENT

02:51PM 1 COEFFICIENT OF VARIATION," AND THEN ABOVE THAT IT SAYS

02:51PM 2 "VITAMIN D."

02:51PM 3 WAS THIS RELEVANT TO YOU?

02:51PM 4 A. YES, BECAUSE VITAMIN D IS A NOTORIOUSLY DIFFICULT TEST,

02:52PM 5 AND THEY EXPLAINED THAT US TO US IN THE DUE DILIGENCE PROCESS,

02:52PM 6 WHERE YOU SEE HUGE AMOUNTS OF VARIATION WITH CONVENTIONAL

02:52PM 7 EQUIPMENT BY THIRD PARTY SUPPLIERS.

02:52PM 8 SO, YOU KNOW, THAT'S -- THIS IS A PARTICULARLY HARD

02:52PM 9 ANALYSIS TO DO, AND TO DO IT ACCURATELY AND CONSISTENTLY.

02:52PM 10 Q. SO I'M GATHERING YOU WERE IMPRESSED THAT THERANOS DID

02:52PM 11 THAT?

02:52PM 12 A. YEAH. THERE'S ACTUALLY A COMPANY THAT JUST FOCUSSED ON

02:52PM 13 VITAMIN D, A PUBLIC COMPANY THAT THAT WAS THEIR WHOLE BUSINESS.

02:52PM 14 THEY WERE ACTUALLY ACQUIRED, I DON'T REMEMBER IF IT WAS AFTER

02:52PM 15 OR BEFORE.

02:52PM 16 BUT THIS WAS AN AREA THAT WE, AS INVESTORS, WERE FAMILIAR

02:52PM 17 WITH THE VITAMIN D SPACE.

02:52PM 18 Q. AND THEN BENEATH THAT IT SAYS, "BY SYSTEMATICALLY

02:52PM 19 CONTROLLING AND STANDARDIZING OUR PROCESSES, THERANOS OFFERS

02:52PM 20 TESTS WITH THE HIGHEST LEVELS OF ACCURACY.

02:52PM 21 "THERANOS AUTOMATES PRE- AND POST-ANALYTIC PROCESSES,

02:52PM 22 DRASTICALLY MINIMIZING HUMAN PROCESSING -- THE CAUSE OF THE

02:52PM 23 MAJORITY OF LAB TEST ERRORS."

02:53PM 24 WAS THIS RELEVANT INFORMATION TO YOUR INVESTMENT?

02:53PM 25 A. YES, IT WAS.

02:53PM 1 Q. LET'S LOOK AT PAGE 24, PLEASE.

02:53PM 2 DO YOU SEE THE HEADING "COST SAVINGS"?

02:53PM 3 A. YES.

02:53PM 4 Q. AND THEN IT SAYS, "THE FULL RANGE OF TESTS. A FRACTION OF
02:53PM 5 THE COSTS"?

02:53PM 6 A. YES.

02:53PM 7 Q. WE SAW IN YOUR DUE DILIGENCE QUESTIONS, YOU ASKED A NUMBER
02:53PM 8 OF QUESTIONS ABOUT THE COST OF THE ANALYZER AND THE ECONOMICS
02:53PM 9 AROUND THIS; IS THAT CORRECT?

02:53PM 10 A. YES.

02:53PM 11 Q. OKAY. AND DID YOU HAVE THE IMPRESSION THAT THERANOS COULD
02:53PM 12 PROVIDE ALL OF THESE TESTS WITH A MINI ANALYZER PROFITABLY?

02:53PM 13 A. YES.

02:53PM 14 Q. AND WAS THAT BASED ON STATEMENTS FROM MR. BALWANI?

02:53PM 15 A. IT WAS BASED ON A COUPLE OF THINGS. ONE WAS THE UNIT
02:53PM 16 ECONOMICS, OR THE COST OF MAKING THE ANALYZER. IT WAS ALREADY
02:53PM 17 40,000. THEY WERE GOING TO DRIVE THAT DOWN TO 10- OR 15,000.

02:54PM 18 THE DRAMATICALLY SMALLER SIZE THAT THEY WOULD NEED TO
02:54PM 19 PROVIDE LABORATORY SERVICES, SO LESS REAL ESTATE, LESS PEOPLE,
02:54PM 20 LESS LAB TECHS, LESS EQUIPMENT, LESS CHEMICALS THAN THOSE BIG
02:54PM 21 THIRD PARTY MACHINES NEEDED.

02:54PM 22 AND THEN THEY ACTUALLY GAVE US MARGINS. SO HE -- WHEN WE
02:54PM 23 WENT THROUGH THE FINANCIAL MODEL IN THE SECOND MEETING, THEY
02:54PM 24 HAD -- NOT ONLY DID THEY HAVE THEIR REVENUE PROJECTIONS BY
02:54PM 25 MONTH THROUGH 2014 AND 2015 WITH THE ROLLOUT AT WALGREENS.

02:54PM 1 AND THEN ALSO IN THAT MEETING WE ALSO LEARNED FOR THE
02:54PM 2 FIRST TIME THAT SAFEWAY WAS ANOTHER ONE OF THEIR PARTNERS.
02:54PM 3 SO THEY HAD ALL OF THAT BY MONTH.
02:54PM 4 BUT THEY ALSO HAD THE MARGINS ASSOCIATED WITH THAT.
02:54PM 5 AND, YES, THEY WERE PROFITABLE, SURPRISINGLY PROFITABLE.
02:54PM 6 I MEAN, YOU WOULD NEVER BE ABLE TO DRIVE PROFITS AT THAT
02:54PM 7 PRICE POINT TO THE MARKET USING EXPENSIVE THIRD PARTY
02:54PM 8 EQUIPMENT.
02:54PM 9 I MEAN, AND THE MODELS WOULD WORK.
02:54PM 10 SO, YEAH, WE WENT THROUGH -- I CAN'T REMEMBER EXACTLY WHAT
02:55PM 11 THE MARGINS WERE, BUT I HAVE THAT IN MY -- YOU KNOW, WE TOOK
02:55PM 12 NOTES AND THEN WE HAVE THEIR MODEL.
02:55PM 13 BUT, YEAH, IT WAS, IT WAS A PROFITABLE SERVICE AS IT
02:55PM 14 RAMPED UP THROUGH 2014 INTO 2015.
02:55PM 15 Q. LET'S GO FORWARD INTO PAGE 33.
02:55PM 16 DO YOU SEE THE HEADING "KEY DEPLOYMENTS"?
02:55PM 17 A. YES.
02:55PM 18 Q. AND THERE'S A REFERENCE TO MEDICARE/MEDICAID;
02:55PM 19 RETAIL;
02:55PM 20 EMERGENCY ROOMS/HOSPITALS.
02:55PM 21 THE REVENUE PROJECTION THAT YOU SAW, DID IT ALSO INCLUDE
02:55PM 22 REVENUE FROM HOSPITAL SERVICES?
02:55PM 23 A. YES.
02:55PM 24 Q. AND THERE'S ALSO A REFERENCE TO DOD;
02:55PM 25 PHARMA.

02:55PM 1 DO YOU SEE THAT?

02:55PM 2 A. I DO.

02:55PM 3 Q. AND DID YOU UNDERSTAND DOD TO BE DEPARTMENT OF DEFENSE?

02:55PM 4 A. YES, THAT'S EXACTLY WHAT IT MEANT, DEPARTMENT OF DEFENSE.

02:56PM 5 Q. AND PHARMA IS A REFERENCE TO PHARMACEUTICAL COMPANIES?

02:56PM 6 A. THE CLINICAL TRIAL ANALYSIS THAT THEY DID FOR
02:56PM 7 PHARMACEUTICAL COMPANIES WITH EXPERIMENTAL MEDICINES.

02:56PM 8 Q. LET ME DRAW YOUR ATTENTION TO PAGE 38.

02:56PM 9 DO YOU SEE AN IMAGE OF A BILLBOARD WITH THE WORDS "THE
02:56PM 10 BLOOD TEST, REINVENTED"?

02:56PM 11 A. YES.

02:56PM 12 Q. WHAT DID YOU UNDERSTAND THIS TO BE?

02:56PM 13 A. THIS WAS AN ADVERTISEMENT. I DON'T KNOW IF IT WAS AN
02:56PM 14 ACTUAL BILLBOARD OR A PROPOSED BILLBOARD, BUT THIS WAS JUST
02:56PM 15 SORT OF GOOD, YOU KNOW, REALLY ATTRACTIVE MARKETING, THE SIZE
02:56PM 16 OF THE NANOTAINER, THE AMOUNT OF BLOOD THAT THEY NEEDED TO RUN
02:56PM 17 STANDARD ANALYTIC EXPERIMENTS BEING DRAMATICALLY LESS THAN
02:56PM 18 ANYONE -- YOU KNOW, EVERYONE HAS GIVEN BLOOD AT SOME POINT.

02:56PM 19 SO, YEAH, I THINK IT'S JUST SORT OF A PUNCHY, SLICK
02:57PM 20 BILLBOARD THAT WOULD BE ON THE SIDE OF 101 OR SOMETHING LIKE
02:57PM 21 THAT.

02:57PM 22 Q. FURTHER ON, LET'S LOOK AT PAGE 43.

02:57PM 23 DO YOU SEE TO THE LEFT IT SAYS, "SHELF BLADE NUMBER 1"?

02:57PM 24 A. YES.

02:57PM 25 Q. AND THEN IF WE ZOOM IN ON THE TEXT, MAYBE WE CAN ZOOM IN A

02:57PM 1 LITTLE BIT MORE ON "GOODBYE BIG BAD NEEDLE," MS. WACHS.

02:57PM 2 GREAT.

02:57PM 3 DO YOU SEE WHERE IT SAYS, "ONLY A TINY SAMPLE FROM A

02:57PM 4 FINGERTIP AND NOTHING ELSE.

02:57PM 5 "ALL YOUR TESTS, EASY AND PAINLESSLY."

02:57PM 6 A. YES, I DO.

02:57PM 7 Q. AND ARE THOSE STATEMENTS THAT MR. BALWANI MADE TO YOU?

02:57PM 8 A. YES.

02:57PM 9 Q. LET'S GO TO PAGE 51, PLEASE.

02:58PM 10 DO YOU SEE THE HEADING "NEW POSSIBILITIES IN THE LAB"?

02:58PM 11 A. YES.

02:58PM 12 Q. AND TO THE LEFT THERE'S A COLUMN UNDER THE HEADING,

02:58PM 13 "ROUTINE, SPECIALTY AND ESOTERIC TESTING.

02:58PM 14 "ALL 1,000 PLUS CURRENTLY RUN TESTS/CPT CODES ARE

02:58PM 15 AVAILABLE THROUGH THERANOS."

02:58PM 16 IS THAT SOMETHING MR. BALWANI TOLD YOU?

02:58PM 17 A. YES.

02:58PM 18 Q. "THERANOS RUNS ANY TESTS AVAILABLE IN CENTRAL

02:58PM 19 LABORATORIES."

02:58PM 20 IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:58PM 21 A. YES.

02:58PM 22 Q. "THERANOS CAN PROCESS ANY SAMPLE TYPE."

02:58PM 23 IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:58PM 24 A. YES.

02:58PM 25 Q. AND THEN TO THE RIGHT, "THE UNPRECEDENTED LACK OF

02:58PM 1 VARIATION WITH THERANOS YIELDS:

02:58PM 2 "HIGHER INTEGRITY DATA AND LONGITUDINAL TRENDING."

02:58PM 3 IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:58PM 4 A. YES. THE LONGITUDINAL DATA IS WHAT -- IS REFERRING TO THE

02:59PM 5 IDEA THAT WITH THERANOS AND THE APP AND THEIR DATABASE, YOU

02:59PM 6 WOULD BE ABLE TO FOLLOW YOUR OWN DATA OVER MANY, MANY YEARS.

02:59PM 7 Q. AND WAS THIS INFORMATION RELEVANT TO YOUR INVESTMENT

02:59PM 8 DECISION?

02:59PM 9 A. YES.

02:59PM 10 Q. LET'S GO TO PAGE 62, PLEASE.

02:59PM 11 DO YOU SEE THE HEADING "THERANOS'S CLIA QUALITY

02:59PM 12 STANDARDS"?

02:59PM 13 A. YES.

02:59PM 14 Q. AND THERE'S A LINE TWO DOWN, "QUALITY CONTROL (QC).

02:59PM 15 "MECHANISM TO ENSURE ALL TESTING PROCEDURES MEET HIGHEST

02:59PM 16 STANDARDS."

02:59PM 17 WAS THIS INFORMATION RELEVANT TO YOU?

02:59PM 18 A. YES.

02:59PM 19 Q. THERE'S ALSO A REFERENCE TO PROFICIENCY TESTING, AND IT

02:59PM 20 SAYS "TESTING FOR ACCURACY AND CONTROL COMPARISONS; BIENNIAL

02:59PM 21 AUDITS OF TESTING ACCURACY."

03:00PM 22 DO YOU SEE THAT?

03:00PM 23 A. YES.

03:00PM 24 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN?

03:00PM 25 A. THE PROFICIENCY TESTING PROCESS IS I THINK MAYBE TWO OR

03:00PM 1 THREE TIMES A YEAR WHERE YOU'RE SENT REFERENCE SAMPLES AND YOU
03:00PM 2 HAVE TO CORRECTLY MEASURE THOSE.

03:00PM 3 AND THAT'S HOW YOU MAINTAIN YOUR CLIA ACCREDITATION.

03:00PM 4 AND IF YOU PASS THAT TESTING, IF YOU CAN ACCURATELY READ
03:00PM 5 THOSE SAMPLES, YOU -- YOU'RE CLIA CERTIFIED AND YOU'RE ALLOWED
03:00PM 6 TO BILL MEDICARE AND MEDICAID FOR LAB SERVICES.

03:00PM 7 AND THIS CAME UP EARLY IN THE SECOND MEETING WHEN WE ASKED
03:00PM 8 ABOUT WHAT IS THE, IS THE FDA THE REGULATORY VALUE HERE, AND
03:00PM 9 THEY KIND OF WALKED US THROUGH HOW THIS WORKS.

03:00PM 10 AND THEN, YOU KNOW, THEY HAD SAID THEIR CLIA LAB, WITH
03:00PM 11 THEIR MENU OF TESTS IN THE RETAIL SETTING, HAD REPEATEDLY
03:00PM 12 MATCHED ALL OF THESE REFERENCE SAMPLES, AND THEY -- FOR
03:01PM 13 EVERYTHING THAT THEY OFFERED.

03:01PM 14 Q. LET'S LOOK AT THE NEXT PAGE, PAGE 63.

03:01PM 15 AND BEFORE I ASK THAT, AT ANY POINT DID MR. BALWANI
03:01PM 16 MENTION SOMETHING CALLED ALTERNATIVE ASSESSMENT OF PROFICIENCY?

03:01PM 17 A. I DON'T RECALL THAT, NO.

03:01PM 18 Q. THIS SAYS, "CLIA SURVEYS AND AUDITS."

03:01PM 19 DOWN AT THE BOTTOM, "THERANOS MAINTAINS CLIA ACCREDITATION
03:01PM 20 AS A HIGH COMPLEXITY LAB AND HAS PASSED ALL AUDITS WITHOUT A
03:01PM 21 SINGLE DEFICIENCY TO MAINTAIN THIS STATUS."

03:01PM 22 WAS THIS RELEVANT TO YOU?

03:01PM 23 A. VERY RELEVANT. THIS -- AS THE COMPANY TOLD US, THIS
03:01PM 24 STANDARD IS ACTUALLY A HIGHER STANDARD THAN THE FDA APPROVAL
03:01PM 25 PROCESS FOR WHETHER IT'S A 510(K), WHICH IS A REGULATORY FILING

03:01PM 1 TYPE.

03:01PM 2 SO, A, THEY TOLD US THAT THIS WAS ACTUALLY A REALLY
03:01PM 3 IMPORTANT -- THIS WAS, I THINK MR. BALWANI USED THE TERM, "THE
03:02PM 4 TRUTH," BECAUSE YOU HAVE TO MEASURE SOMETHING AGAINST -- YOU
03:02PM 5 HAVE TO IDENTIFY THESE SAMPLES THAT YOU SENT.

03:02PM 6 AND, YOU KNOW, IT WAS -- DESPITE -- YOU KNOW, THERE'S NO
03:02PM 7 BETTER VALIDATION TO THE TECHNOLOGY. YOU CAN SAY WHATEVER --
03:02PM 8 ANYONE, ANYONE WHO IS THREATENED BY THIS TYPE OF OPEN ENDED
03:02PM 9 TECHNOLOGY, THEY CAN SAY WHATEVER THEY WANT TO THEIR
03:02PM 10 SHAREHOLDERS, OH, IT DOESN'T WORK, BLAH BLAH.

03:02PM 11 BUT WHEN YOU HAVE -- WHEN YOU PASS THE CLIA ACCREDITATION
03:02PM 12 STANDARD FOR EVERYTHING YOU OFFER, THE WHOLE MENU, THAT IN AND
03:02PM 13 OF ITSELF SPEAKS VOLUMES TO THE CAPABILITIES OF THE TECHNOLOGY.

03:02PM 14 SO, YES, THIS WAS A VERY KEY AND IMPORTANT DISCLOSURE.

03:02PM 15 Q. AND DID MR. BALWANI TELL YOU THAT THIS WAS SOMETHING THAT
03:02PM 16 THEY HAD ALREADY DONE AS OF JANUARY OF 2014?

03:02PM 17 A. HE SAID THAT THEY HAD REPEATEDLY AND ACCURATELY MET
03:02PM 18 THESE -- MEASURED THESE SAMPLES IN THEIR CLIA LAB.

03:02PM 19 Q. OKAY. LET'S LOOK AT PAGE 64.

03:03PM 20 DO YOU SEE WHERE IT SAYS "VALIDATION OF THERANOS"?

03:03PM 21 A. YES.

03:03PM 22 Q. "THERANOS HAS BEEN COMPREHENSIVELY VALIDATED OVER THE
03:03PM 23 COURSE OF THE LAST SEVEN YEARS BY TEN OF THE FIFTEEN LARGEST
03:03PM 24 PHARMACEUTICAL COMPANIES."

03:03PM 25 DO YOU SEE THAT LANGUAGE?

03:03PM 1 A. YES.

03:03PM 2 Q. AND WAS THIS RELEVANT TO YOU?

03:03PM 3 A. YES.

03:03PM 4 Q. OKAY. MS. WACHS, PLEASE GO TO PAGE 69.

03:03PM 5 DO YOU SEE THE HEADING, "EXCERPTS FROM THERANOS'S TEST

03:03PM 6 MENU"?

03:03PM 7 A. YES.

03:03PM 8 Q. AND THEN IT SAYS, "105 TESTS SHOWN, ANOTHER 20 PLUS PAGES

03:03PM 9 SHOW ALL AVAILABLE TESTS WITH THERANOS."

03:03PM 10 DO YOU SEE THAT?

03:03PM 11 A. YES.

03:03PM 12 Q. AND WHAT DID YOU UNDERSTAND THIS TO BE?

03:03PM 13 A. THIS WAS THE TEST -- THE RETAIL TEST MENU THAT THEY WERE

03:04PM 14 OFFERING.

03:04PM 15 Q. AND DID YOU UNDERSTAND THESE WERE THE TESTS THAT THERANOS

03:04PM 16 WAS PERFORMING ON ITS DEVICE?

03:04PM 17 A. THESE WERE THE TESTS THAT THEY WERE PERFORMING ON THEIR

03:04PM 18 PROPRIETARY TECHNOLOGY IN THEIR CLIA LAB, YES.

03:04PM 19 Q. OKAY. THANK YOU, MS. WACHS. WE CAN TAKE THIS DOWN.

03:04PM 20 LET ME PLEASE DRAW YOUR ATTENTION TO EXHIBIT 1443.

03:04PM 21 IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI

03:04PM 22 IN THE JANUARY 2014 TIME PERIOD, MR. GROSSMAN?

03:04PM 23 A. I'M SORRY. YES.

03:05PM 24 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

03:05PM 25 EXHIBIT 1443.

03:05PM

1

MS. WALSH: NO OBJECTION.

03:05PM

2

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:05PM

3

(GOVERNMENT'S EXHIBIT 1443 WAS RECEIVED IN EVIDENCE.)

03:05PM

4

MR. LEACH: IF WE CAN ZOOM IN, MS. WACHS, ON THE

03:05PM

5

BOTTOM PORTION OF PAGE 1.

03:05PM

6

Q. MR. GROSSMAN, YOU APPEAR TO WRITE ON JANUARY 20TH, 2014,

03:05PM

7

"HERE ARE A FEW OF THE TOPICS FOR TOMORROW."

03:05PM

8

DO YOU SEE THAT?

03:05PM

9

A. YES.

03:05PM

10

Q. AND DID YOU HAVE A FOLLOW-UP PHONE CALL WITH MR. BALWANI

03:05PM

11

SHORTLY AFTER THIS EMAIL?

03:05PM

12

A. YES, WE DID.

03:05PM

13

Q. OKAY. YOU WROTE, "COMPETITION. IS THERE ANYBODY OUT

03:05PM

14

THERE RIGHT NOW THEY ARE AWARE OF?"

03:05PM

15

AND THEN IN THE LAST TWO QUESTIONS YOU WROTE, "DO THEY SEE

03:05PM

16

ANOTHER LAB IN A BOX EMERGE? WHAT IS THEIR TIME TO MARKET

03:05PM

17

ADVANTAGE?"

03:05PM

18

DO YOU SEE THAT?

03:05PM

19

A. YES.

03:05PM

20

Q. AND WHAT DID YOU MEAN BY "LAB IN A BOX"?

03:05PM

21

A. WELL, THAT WAS THE WHOLE CONCEPT OF THE MINILAB WAS YOU'RE

03:06PM

22

SHRINKING THE ENTIRE REFERENCE LABORATORY DOWN INTO THIS PC

03:06PM

23

SIZED CONTAINER, BOX.

03:06PM

24

YOU KNOW, THIS IS THE MINILAB. THIS IS THE MINIATURIZING

03:06PM

25

THE LAB, NOT THE POINT OF CARE TEST.

03:06PM 1 AND SO WE WEREN'T AWARE OF ANY COMPANY THAT WAS PURSUING A
03:06PM 2 STRATEGY LIKE THIS, BUT WE WANTED TO MAKE SURE THAT WE HADN'T
03:06PM 3 MISSED ANY COMPETITORS THAT WE HAD TO FOCUS ON.

03:06PM 4 PART OF THIS IS WE'RE TRYING TO REALLY UNDERSTAND, WHAT IS
03:06PM 5 THE REAL COMPETITIVE MODE HERE? WHAT IS THE REAL -- WHAT ARE
03:06PM 6 THE BARRIERS TO ENTRY? IS IT PATENTS? IS IT THE LEAD, THE
03:06PM 7 FIRST MOVER ADVANTAGE THEY HAD? IS IT ALL THE MONEY?

03:06PM 8 WE WERE REALLY TRYING TO UNDERSTAND HOW LONG WILL IT BE
03:06PM 9 BEFORE -- A, WILL THERE BE COMPETITORS; AND, B, HOW LONG WILL
03:07PM 10 IT TAKE BEFORE COMPETITORS SHOW UP THAT HAVE TECHNOLOGY THAT
03:07PM 11 CAN POTENTIALLY RIVAL THERANOS'S DEVELOPMENT?

03:07PM 12 Q. IN THE NEXT PARAGRAPH YOU WROTE, "WE WANT TO REVISIT THE
03:07PM 13 FDA APPROVED PROCESS FOR ASSAYS AND ANALYZER. WILL THE
03:07PM 14 ANALYZER BE AN FDA APPROVED DEVICE?"

03:07PM 15 DO YOU SEE THAT TEXT?

03:07PM 16 A. YES.

03:07PM 17 Q. AND BY "ANALYZER," WERE YOU REFERRING TO THE MINILAB?

03:07PM 18 A. YES.

03:07PM 19 Q. FURTHER DOWN BELOW IN THE NEXT PARAGRAPH YOU WROTE IN
03:07PM 20 LINE 2, "HOW WILL THIS WORK IN PHASE II OF THE ROLLOUT WHERE
03:07PM 21 THEY ARE PUTTING ANALYZERS IN THE STORES? SAME FOR PHYSICIAN
03:07PM 22 OFFICE. WILL EACH PHYSICIAN OFFICE BE REQUIRED TO BE CLIA
03:07PM 23 CERTIFIED?"

03:07PM 24 WHAT WERE YOU GETTING AT THERE?

03:07PM 25 A. WE WERE TRYING TO UNDERSTAND HOW THE REGULATIONS OF THIS

03:07PM 1 TECHNOLOGY WILL IMPACT THE LONGER TERM BUSINESS MODEL THERE.

03:07PM 2 AND FOR US, THESE QUESTIONS ARE ALSO RELATED TO OUR

03:08PM 3 FINANCIAL MODEL THAT WE'RE TRYING TO BUILD, THE LONGER TERM

03:08PM 4 FINANCIAL MODEL.

03:08PM 5 THEY GAVE US A MODEL FOR 2014 AND '15 BY THE MONTH, AND SO

03:08PM 6 WE HAVE THAT TO SORT OF WORK WITH.

03:08PM 7 BUT THEN AS WE GOT BEYOND 2015, WE HAD TO SORT OF BUILD

03:08PM 8 OUR OWN, OUR OWN MODEL.

03:08PM 9 SO PART OF THESE QUESTIONS ARE JUST TRYING TO UNDERSTAND

03:08PM 10 HOW -- WHAT IS -- HOW DO WE THINK ABOUT HOW THIS IS GOING TO BE

03:08PM 11 USED IN THE REAL WORLD AND, YOU KNOW, IS IT GOING TO BE USED --

03:08PM 12 WHAT ARE THE POTENTIAL, WHAT ARE THE POTENTIAL HURDLES THEY

03:08PM 13 HAVE TO GET OVER IN THESE DIFFERENT MARKET SEGMENTS, THE

03:08PM 14 HOSPITAL MARKET, THE PHYSICIAN MARKET, THE RETAIL SETTING?

03:08PM 15 AND, YOU KNOW, HOW DO WE THINK ABOUT THE REGULATORY RISKS,

03:08PM 16 IF THERE ARE REGULATORY RISKS.

03:08PM 17 AND SO THAT'S WHERE THESE QUESTIONS ARE GOING.

03:08PM 18 SO, YOU KNOW, WE ACTUALLY ENDED UP -- THE WAY WE ENDED UP

03:08PM 19 MODELING THE COMPANY, WE TRIED TO TAKE THE REGULATORY ISSUES

03:08PM 20 OFF THE TABLE AND FOCUS ON HUB AND SPOKE, IN OTHER WORDS, BIG

03:09PM 21 METROPOLITAN AREAS WHERE YOU DIDN'T HAVE TO PUT THE SYSTEMS IN

03:09PM 22 WALGREENS STORES.

03:09PM 23 BUT THE PHYSICIAN OFFICE IS ACTUALLY A REGULATORY SAFE

03:09PM 24 HARBOR WHERE THE COMPANY EXPLAINED THAT YOU ACTUALLY CAN DO

03:09PM 25 TESTING WITHIN -- THESE DEVICES CAN BE USED THERE, YOU CAN DO

03:09PM 1 TESTING WITHIN PHYSICIAN OFFICES. THEY ARE A SAFE AREA FOR
03:09PM 2 CLIA REGULATIONS.

03:09PM 3 BUT THEY WERE NOT FOCUSSED ON PUTTING THESE DEVICES IN
03:09PM 4 PHYSICIAN OFFICES. THEY WERE MORE FOCUSSED ON NANOTAINERS AND
03:09PM 5 COLLECTING SPECIMENS FROM PHYSICIAN OFFICES AND THEN TAKING
03:09PM 6 THEM TO THEIR LOCAL LABORATORY AND THEN PROCESSING THOSE.

03:09PM 7 WE, WE -- AND THE, THE -- WE, WE -- THIS -- THE FIRST
03:10PM 8 THING WE TALKED ABOUT IN THIS WAS REALLY AROUND, DO YOU WANT TO
03:10PM 9 BE A MEDICAL DEVICE COMPANY OR DO YOU WANT TO BE AN INTEGRATED
03:10PM 10 LAB SERVICE PROVIDER?

03:10PM 11 WE, AGAIN, KIND OF PUSHED HIM, MR. BALWANI, ON THAT POINT,
03:10PM 12 AND HE WAS VERY CLEAR, WE DO NOT WANT TO BE A MEDICAL DEVICE
03:10PM 13 COMPANY.

03:10PM 14 AND THAT CHANGES THE REGULATORY RISKS.

03:10PM 15 SO ONCE, ONCE THEY DECIDED NOT TO BE IN THE BUSINESS OF
03:10PM 16 SELLING DEVICES TO THIRD PARTIES, THAT CHANGED A LOT OF FDA
03:10PM 17 REGULATED RISKS, SO THAT WAS AN IMPORTANT PART OF THIS
03:10PM 18 CONVERSATION.

03:10PM 19 Q. IN THAT SECOND TO LAST PARAGRAPH YOU WROTE, "WE WANT TO
03:10PM 20 BETTER UNDERSTAND THE MANUFACTURING RAMP OF ANALYZERS. CAN
03:10PM 21 THEY MAKE THEM AT HIGHER VOLUME WITHOUT SACRIFICING PRODUCT
03:10PM 22 QUALITY? WHERE DO THEY MAKE THEM? WE'D LIKE TO SEE THAT PART
03:10PM 23 OF THE OPERATION IF POSSIBLE. WHY DID THEY DECIDE TO MAKE THE
03:10PM 24 ANALYZERS VERSUS OUTSOURCE THEM?"

03:10PM 25 DO YOU SEE THAT LANGUAGE?

03:10PM 1

A. YES.

03:10PM 2

Q. IS THIS ANOTHER EFFORT BY YOU TO UNDERSTAND THEIR VERTICAL INTEGRATION?

03:11PM 3

03:11PM 4

A. YES. WE WANTED TO UNDERSTAND, ESPECIALLY NOW THAT WE HAVE THE ROLLOUT, YOU KNOW, COULD THEY MAKE ENOUGH -- COULD THEY ACTUALLY MAKE ENOUGH OF THEIR OWN PROPRIETARY ANALYZERS TO MEET THE DEMAND FORECAST THAT THEY HAD FROM WALGREENS OVER THE NEXT -- OVER 2014 AND '15, IN ADDITION TO THE DEMAND THAT THEY EXPECTED TO GET FROM HOSPITAL LABORATORIES.

03:11PM 5

03:11PM 6

03:11PM 7

03:11PM 8

03:11PM 9

03:11PM 10

SO, YOU KNOW, IT'S ONE THING TO BE ABLE TO MAKE AN ANALYZER.

03:11PM 11

03:11PM 12

IT'S A WHOLE OTHER THING TO BE ABLE TO MAKE HUNDREDS OF THEM, AND THEN TO MAKE THEM SO THEY ACTUALLY PERFORM IN THE REAL WORLD.

03:11PM 13

03:11PM 14

03:11PM 15

SO WE REALLY WANTED TO FOCUS ON, YOU KNOW, CAN YOU ACTUALLY DELIVER HIGH QUALITY EQUIPMENT? CAN YOU ACTUALLY MAKE YOUR OWN PROPRIETARY HIGH QUALITY EQUIPMENT AT SCALE? DO YOU HAVE A FACILITY TO DO THAT? WE HADN'T SEEN A MANUFACTURING FACILITY.

03:11PM 16

03:11PM 17

03:11PM 18

03:11PM 19

03:11PM 20

SO THAT'S REALLY -- AND MAKING SURE THAT TIES BACK TO OUR FINANCIAL FORECAST, SO THEY HAVE ENOUGH CASH TO INVEST IN THIS LAB INFRASTRUCTURE BUILD OUT.

03:11PM 21

03:12PM 22

03:12PM 23

Q. IN RESPONSE TO THESE QUESTIONS, DID MR. BALWANI SAY ANYTHING ABOUT SIEMENS MACHINES?

03:12PM 24

03:12PM 25

A. NO, HE DID NOT.

03:12PM 1 Q. DID HE SAY ANYTHING ABOUT THIRD PARTY ANALYZERS?

03:12PM 2 A. NO, HE DID NOT.

03:12PM 3 Q. AT ANY POINT IN TIME DID MR. BALWANI TALK ABOUT THE
03:12PM 4 DURABILITY OF THE DEVICE OR ITS ABILITY TO WITHSTAND HARSH
03:12PM 5 CONDITIONS?

03:12PM 6 A. YES. AS PART OF THIS CONVERSATION, HE EXPLAINED HOW EACH
03:12PM 7 ONE OF THESE DEVICES ACTUALLY HAS, HE USED THE TERM, A
03:12PM 8 HEARTBEAT. IT'S CONNECTED TO THE NETWORK WIRELESSLY.

03:12PM 9 AND SO THEY CAN, THEY CAN TRACK HOW EACH ONE OF THEIR
03:12PM 10 PROPRIETARY SYSTEMS IS PERFORMING.

03:12PM 11 AND BECAUSE OF THE WORK THAT THEY DID WITH THE MILITARY,
03:12PM 12 THEY KNEW EXACTLY HOW TO CALIBRATE THESE THINGS. THEY KNEW
03:12PM 13 WHERE THEY TEND TO RUN INTO PROBLEMS.

03:12PM 14 AND SO THEY LEARNED OVER THE LAST TEN YEARS FROM THAT
03:12PM 15 EXPERIENCE, YOU KNOW, AND IT'S MADE THESE MACHINES MORE ROBUST.

03:13PM 16 HE EXPLAINED THAT -- I USE THE EXAMPLE THAT THEY KNOW THAT
03:13PM 17 ABOVE 120 DEGREES, FROM THE MILITARY EXPERIENCE, THE MACHINES
03:13PM 18 HAVE PROBLEMS.

03:13PM 19 BUT THAT WASN'T GOING TO BE AN ISSUE IN THE COMMERCIAL
03:13PM 20 RETAIL SETTING.

03:13PM 21 BUT THAT'S THE TYPE OF STUFF THAT THEY LEARNED SO THAT
03:13PM 22 THEY FELT REALLY CONFIDENT THAT THEY COULD MAKE NOT ONLY ENOUGH
03:13PM 23 OF THESE, BUT THEY COULD MAKE THEM WHERE THEY WILL PERFORM AS
03:13PM 24 EXPECTED IN A 24/7 TYPE PRODUCTION ENVIRONMENT.

03:13PM 25 WE, WE -- I THINK THE NUMBER, I THINK WE TALKED ABOUT THEY

03:13PM 1 COULD MAKE UP TO 200 A MONTH, AND BASED ON THE MODEL THAT THEY
03:13PM 2 SENT US, MR. BALWANI WAS PRETTY CONFIDENT THAT THEY WOULDN'T
03:13PM 3 NEED -- THESE THINGS ARE SO ROBUST, THEY WORK SO WELL IN THE
03:13PM 4 REAL WORLD, WE WOULDN'T NEED MORE THAN 50 A MONTH TO -- THIS IS
03:14PM 5 KIND OF FOR 2014 -- IN ORDER TO MORE THAN MEET THE DEMAND, THE
03:14PM 6 DEMAND RAMP THAT THEY EXPECTED.

03:14PM 7 Q. DID MR. BALWANI SAY ANYTHING ABOUT THE DEVICE BEING IN
03:14PM 8 AFGHANISTAN?

03:14PM 9 A. THAT'S WHERE THEY LEARNED THAT -- THAT'S THE -- HE WAS
03:14PM 10 EXPLAINING THAT THE, THE USE OF THESE DEVICES WITH THE MILITARY
03:14PM 11 AND THE INFORMATION THAT THEY RECEIVED FROM THESE DEVICES IN
03:14PM 12 THAT SETTING HAS HELPED THEM ENGINEER THEM EVEN BETTER FOR THIS
03:14PM 13 REAL WORLD RETAIL ROLLOUT.

03:14PM 14 AND ONE OF THE PRINCIPAL LEARNINGS WAS TEMPERATURE. THEY
03:14PM 15 LEARNED THAT ABOVE 120 DEGREES FAHRENHEIT, OR MAYBE IT WAS
03:14PM 16 100 -- SOMETHING LIKE THAT, 120, 125 -- THAT THE MACHINES DON'T
03:14PM 17 WORK.

03:14PM 18 AND SO THAT'S AN EXAMPLE OF HOW THE FEEDBACK FROM THE
03:14PM 19 BATTLEFIELD HELPED BUILD A MORE ROBUST PROPRIETARY SAMPLE
03:14PM 20 PROCESSING UNIT.

03:14PM 21 Q. LET ME NEXT DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS
03:14PM 22 EXHIBIT 1454.

03:15PM 23 IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI
03:15PM 24 IN THE JANUARY 2014 TIME PERIOD LEADING UP TO PFM'S INVESTMENT?

03:15PM 25 A. YES.

03:15PM 1 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
03:15PM 2 EXHIBIT 1454.
03:15PM 3 MS. WALSH: NO OBJECTION.
03:15PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
03:15PM 5 (GOVERNMENT'S EXHIBIT 1454 WAS RECEIVED IN EVIDENCE.)
03:15PM 6 BY MR. LEACH:
03:15PM 7 Q. MR. GROSSMAN, LET ME DRAW YOUR ATTENTION TO THE BOTTOM
03:15PM 8 PORTION OF THE PAGE.
03:15PM 9 DO YOU SEE WHERE YOU WROTE TO MR. BALWANI, "THANKS AGAIN
03:15PM 10 FOR THE TIME YESTERDAY."
03:15PM 11 IN THIS TIME PERIOD, WERE YOU HAVING PHONE CALLS WITH
03:15PM 12 MR. BALWANI?
03:15PM 13 A. YES.
03:15PM 14 Q. OKAY. AND THAT'S ALL IN AN EFFORT TO GET INFORMATION
03:15PM 15 ABOUT THERANOS TO MAKE AN INVESTMENT DECISION?
03:15PM 16 A. I BELIEVE WE, WE HAD A PHONE CONVERSATION RELATED TO THE
03:15PM 17 PREVIOUS EMAIL WE JUST WENT OVER.
03:15PM 18 Q. OKAY.
03:15PM 19 A. AND SO THIS, I THINK, EMAIL WAS AFTER THAT PHONE
03:16PM 20 CONVERSATION TOOK PLACE.
03:16PM 21 Q. YOU THEN WROTE, "I THINK WE'VE ANSWERED THE MAJORITY OF
03:16PM 22 OUR OPEN QUESTIONS AND HAVE JUST A FEW REMAINING ISSUES TO
03:16PM 23 ADDRESS. WE WOULD LIKE TO ADD A FEW CONSULTANTS TO THE NDA AS
03:16PM 24 WE DISCUSSED YESTERDAY. WE'D ALSO LIKE TO SPEAK WITH SOMEBODY,
03:16PM 25 IF THEY ARE OPEN TO IT, FROM UNITED HEALTH CARE."

03:16PM 1 DO YOU SEE THAT?

03:16PM 2 A. YES.

03:16PM 3 Q. AND YOU NEVER GOT ACCESS TO ANYBODY FROM UNITED HEALTH
03:16PM 4 CARE?

03:16PM 5 A. NO.

03:16PM 6 Q. AND WHAT WAS THE RESPONSE WHEN YOU WANTED TO BRING
03:16PM 7 CONSULTANTS IN?

03:16PM 8 A. WELL, IN THIS EMAIL, THIS EMAIL ABOVE THIS SECTION KIND OF
03:16PM 9 ANSWERS THAT QUESTION.

03:16PM 10 I MEAN, WE, WE -- THEY WERE RELUCTANT, BUT AS LONG AS WE
03:16PM 11 DIDN'T TALK ABOUT ANYTHING RELATED TO THE COMPANY, THEIR
03:16PM 12 REGULATORY STRATEGY, THEIR BUSINESS RELATIONSHIP WITH
03:16PM 13 WALGREENS, THEIR ROLLOUT ON THE RETAIL SETTING, THEIR
03:16PM 14 PARTNERSHIP WITH WALGREENS, I MEAN, SO THEY WERE RELUCTANT, BUT
03:17PM 15 THEY DID AGREE AS LONG AS WE DIDN'T TALK ABOUT ANY OF THE
03:17PM 16 RELEVANT BUSINESS ISSUES THAT WE NEEDED TO ENGAGE THE
03:17PM 17 CONSULTANT ON.

03:17PM 18 SO IT WAS KIND OF A DEAD END, BUT, YOU KNOW, WE, WE TRIED.

03:17PM 19 Q. OKAY. AND YOU THEN WROTE, "LASTLY, WE WOULD STILL LIKE TO
03:17PM 20 SEE THE LAB AND THE ANALYZER IN ACTION IF THAT'S POSSIBLE."

03:17PM 21 DO YOU SEE THAT LANGUAGE?

03:17PM 22 A. YES.

03:17PM 23 Q. OKAY. AND IF WE CAN GO TO MR. BALWANI'S RESPONSE,
03:17PM 24 MS. WACHS.

03:17PM 25 DO YOU SEE IN THE THIRD PARAGRAPH WHERE MR. BALWANI WROTE,

03:17PM 1 "SPEAKING WITH UHG WON'T BE POSSIBLE."

03:17PM 2 A. YEAH. UHG IS REFERRING TO UNITED HEALTH CARE GROUP.

03:17PM 3 THAT'S THE TERM THAT THERANOS USED FOR UNITED HEALTH CARE.

03:17PM 4 WE USED THE STOCK TICKER UNH, SO THAT'S THE SAME ENTITY.

03:17PM 5 Q. OKAY. YOU THEN WROTE, "IF WALKING THROUGH OUR LAB" --

03:17PM 6 EXCUSE ME.

03:17PM 7 MR. BALWANI WROTE, "IF WALKING THROUGH OUR LAB BECOMES THE

03:17PM 8 LAST REMAINING ITEM ON THE LIST, THEN WE CAN WALK 1 PERSON,

03:18PM 9 PERHAPS YOURSELF, THROUGH OUR BSL-2 LAB WHERE WE ARE RUNNING

03:18PM 10 BANKS OF OUR DEVICES."

03:18PM 11 DO YOU SEE THAT?

03:18PM 12 A. YES.

03:18PM 13 Q. AND AT SOME POINT DID YOU GET A TOUR OF THERANOS?

03:18PM 14 A. YES.

03:18PM 15 Q. AND WHAT DID YOU SEE?

03:18PM 16 A. WELL, WE DID A TOUR OF THE LAB, AND THIS WAS ALSO AT THEIR

03:18PM 17 PALO ALTO CORPORATE HEADQUARTERS, AND WE WENT INTO A LAB THAT

03:18PM 18 WAS SET UP WITH RACKS, METAL RACKS, WHERE THEY HAD A WHOLE

03:18PM 19 BUNCH OF MINILABS THAT WERE RUNNING SAMPLES.

03:18PM 20 Q. AND DURING THIS TOUR OF THE LAB, DID YOU SEE ANY SIEMENS

03:18PM 21 MACHINES?

03:18PM 22 A. NO.

03:18PM 23 Q. DID YOU SEE ANY DEVICES MANUFACTURED BY SOMEONE OTHER THAN

03:18PM 24 THERANOS?

03:18PM 25 A. NO.

03:18PM 1 Q. AND WERE YOU ALSO GIVEN A TOUR OF THE MANUFACTURING
03:19PM 2 FACILITY?

03:19PM 3 A. YES, WE REQUESTED -- THAT'S ONE OF THE ITEMS THAT WE
03:19PM 4 REQUESTED, TO SEE THE MANUFACTURING FACILITY.

03:19PM 5 Q. AND WHO ARRANGED THE TOUR OF THE MANUFACTURING FACILITY?

03:19PM 6 A. MR. BALWANI DID.

03:19PM 7 Q. AND WHAT DID YOU SEE DURING YOUR TOUR OF THE MANUFACTURING
03:19PM 8 FACILITY?

03:19PM 9 A. WE WALKED THROUGH THE WHOLE FACILITY. IT WAS A BIG
03:19PM 10 FACILITY. WE MET HIM OUT IN FRONT.

03:19PM 11 THEY ACTUALLY HAD A LAB THAT THEY WERE IN THE PROCESS OF
03:19PM 12 BRINGING UP TO CLIA STANDARDS, SO WE SAW THE SPACE THAT THEY
03:19PM 13 WERE GOING TO BE USING FOR THEIR, THEIR NEW CLIA LAB.

03:19PM 14 AND THEN WE WALKED THROUGH THE MANUFACTURING PLANT, THE
03:19PM 15 WHOLE -- WE STARTED WHERE THEY WERE MACHINING BOTH PLASTIC AND
03:19PM 16 METAL PARTS, AND THEY WALKED US THROUGH THE WHOLE -- ALL OF THE
03:19PM 17 SPECIAL EQUIPMENT THAT THEY BOUGHT FROM I THINK SOME JAPANESE
03:19PM 18 COMPANY.

03:19PM 19 AND THEN WE WENT TO THE ASSEMBLY SIDE OF THE PLANT, AND
03:19PM 20 THEN WE FINISHED IN THE DISTRIBUTION WHERE THEY WERE KIND OF
03:20PM 21 PACKAGING AND SHIPPING DEVICES.

03:20PM 22 Q. DURING THIS TOUR OF THE MANUFACTURING FACILITY, DID YOU
03:20PM 23 SEE ANY SIEMENS DEVICES?

03:20PM 24 A. NO.

03:20PM 25 Q. DID MR. BALWANI DRAW YOUR ATTENTION TO ANY SIEMENS

03:20PM 1
03:20PM 2
03:20PM 3
03:20PM 4
03:20PM 5
03:20PM 6
03:20PM 7
03:20PM 8
03:20PM 9
03:20PM 10
03:20PM 11
03:20PM 12
03:20PM 13
03:20PM 14
03:20PM 15
03:20PM 16
03:20PM 17
03:20PM 18
03:21PM 19
03:21PM 20
03:21PM 21
03:21PM 22
03:21PM 23
03:21PM 24
03:21PM 25

DEVICES?

A. NO.

Q. LET ME DRAW YOUR ATTENTION TO WHAT HAS BEEN MARKED AS EXHIBIT 1477.

IS THIS ANOTHER EMAIL BETWEEN YOU AND MR. BALWANI IN JANUARY OF 2014 LEADING UP TO PFM'S INVESTMENT?

A. YES.

MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 1477.

MS. WALSH: NO OBJECTION.

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

(GOVERNMENT'S EXHIBIT 1477 WAS RECEIVED IN EVIDENCE.)

MR. LEACH: IF YOU COULD ZOOM IN ON THE TOP HALF, MS. WACHS.

Q. MR. GROSSMAN, DO YOU SEE THE SUBJECT OF THIS EMAIL IS QUESTIONS FOR CALL ON FINANCIAL MODEL?

A. YES.

Q. AND AT SOME POINT DID YOU HAVE ANOTHER CONVERSATION WITH MR. BALWANI ABOUT THE FINANCIAL MODEL THAT HE HAD PROVIDED TO PFM?

A. YES.

Q. OKAY. YOU WROTE, "SUNNY -- HERE ARE THE QUESTIONS."

AND THEN IN THE THIRD ROW, "CAN WAG WALK AWAY OR DIAL BACK THE ROLLOUT IF THEY ARE NOT SATISFIED WITH THE UPTAKE?"

WHY WERE YOU ASKING THAT QUESTION?

03:21PM 1 A. WE JUST WANTED TO UNDERSTAND, YOU KNOW, HOW CONNECTED THE
03:21PM 2 TWO ORGANIZATIONS WERE, AND THEY HAD A REALLY STRONG
03:21PM 3 PARTNERSHIP, AND WE WERE -- I WANTED TO MAKE SURE IT WASN'T TOO
03:21PM 4 GOOD IN THE SENSE THAT THERANOS -- THAT IT WASN'T A FAIR DEAL,
03:21PM 5 IT WAS TOO GOOD FOR THERANOS RELATIVE TO WALGREENS, AND SO WE
03:21PM 6 WANTED TO UNDERSTAND WHAT LEGALLY WALGREENS'S ABILITY TO
03:21PM 7 DISENGAGE FROM THERANOS WAS.

03:21PM 8 Q. YOU THEN WROTE, "WHAT IS PHARMA SERVICE REVENUES? WHAT IS
03:22PM 9 MARGIN ON THIS?"

03:22PM 10 DO YOU SEE THAT?

03:22PM 11 A. YES.

03:22PM 12 Q. AND DID YOU INCORPORATE REVENUES FROM PHARMACEUTICAL
03:22PM 13 COMPANIES INTO THE MODEL THAT PFM PREPARED TO UNDERSTAND
03:22PM 14 THERANOS'S BUSINESS?

03:22PM 15 A. YES. THIS WAS -- THEY TOLD US IN THE FIRST MEETING THAT
03:22PM 16 THEY WERE SHIFTING THEIR EMPHASIS IN THE NEAR TERM TO THE
03:22PM 17 RETAIL ROLLOUT, BUT THEY STILL HAD A VERY, A VERY -- A BIG
03:22PM 18 FOCUS ON CONTINUING TO WORK WITH PHARMA. IT WAS IN THE
03:22PM 19 FINANCIAL MODEL THAT THEY SHOWED US.

03:22PM 20 WE ACTUALLY, WE ACTUALLY INTRODUCED THEM TO COMPANIES
03:22PM 21 TRYING TO HELP THEM GET BUSINESS. THAT WAS AFTER THE
03:22PM 22 INVESTMENT WAS MADE, WHICH -- SO, YEAH, THIS WAS, THIS WAS
03:22PM 23 ANOTHER REVENUE LINE IN THE FINANCIAL MODEL.

03:22PM 24 Q. BASED ON STATEMENTS FROM MR. BALWANI, DID YOU BELIEVE THAT
03:22PM 25 THERANOS CURRENTLY HAD REVENUE FROM PHARMACEUTICAL COMPANIES?

03:22PM 1

A. YES.

03:22PM 2

Q. AND THEN IF WE CAN ZOOM OUT, MS. WACHS.

03:23PM 3

03:23PM 4

FURTHER DOWN BELOW YOU WROTE, "HOW DO THEY DEAL WITH THE
VENOUS DRAW ISSUE? I HAD TESTS DONE TODAY IN PA WALGREENS AND
HAD TO GET VENOUS DRAW."

03:23PM 5

03:23PM 6

DO YOU SEE THAT LANGUAGE?

03:23PM 7

A. YES.

03:23PM 8

Q. FIRST OF ALL, IS IT TRUE THAT YOU HAD A TEST DONE IN A
PALO ALTO WALGREENS AND HAD TO GET A VENOUS DRAW?

03:23PM 9

03:23PM 10

A. YES.

03:23PM 11

Q. TELL US ABOUT THAT.

03:23PM 12

A. I WENT IN -- EVERYONE ON OUR TEAM, I THINK EVERYONE, HAD
THEIR TESTS DONE AT SOME POINT.

03:23PM 13

03:23PM 14

SO WE WENT INTO THE PALO ALTO -- I WENT INTO THE PALO ALTO
WALGREENS UNANNOUNCED, AND I HAD A PHYSICIAN ORDER A BUNCH OF
TESTS, AND SO IT WAS JUST PART OF -- IT WAS PART OF OUR DUE
DILIGENCE PROCESS. WE WANTED TO MAKE SURE EVERYONE, MULTIPLE
PEOPLE WENT THROUGH THE PROCESS OF USING THE SERVICE IN
PALO ALTO.

03:23PM 15

03:23PM 16

03:23PM 17

03:23PM 18

03:24PM 19

03:24PM 20

Q. AND WHEN YOU GOT A VENOUS DRAW IN PALO ALTO, DID THAT
SURPRISE YOU?

03:24PM 21

03:24PM 22

A. A LITTLE BIT.

03:24PM 23

Q. OKAY. DID YOU HAVE CONVERSATIONS WITH MR. BALWANI ABOUT
THAT?

03:24PM 24

03:24PM 25

A. YES.

03:24PM 1 Q. WHAT DID HE TELL YOU?

03:24PM 2 A. HE SAID IT WAS UNUSUAL, VERY UNUSUAL.

03:24PM 3 HE SAID THAT MY PHYSICIAN ORDERED A VERY, VERY WEIRD TEST

03:24PM 4 THAT NO ONE ORDERS AND THAT, YOU KNOW, THERE WERE -- YOU KNOW,

03:24PM 5 AND THEY HAD TOLD US THAT THEY WERE -- THEY COULD DO AT THE

03:24PM 6 CURRENT POINT IN TIME 99 PERCENT OF THE TESTS, AND THERE WERE A

03:24PM 7 FEW THINGS THAT WOULD TAKE A FEW MONTHS, LIKE SIX MONTHS, LESS

03:24PM 8 THAN SIX MONTHS TO TRANSITION TO FINGERSTICK.

03:24PM 9 AND SO, YOU KNOW, IT KIND OF FELL WITHIN THAT CATEGORY IS

03:24PM 10 WHAT HE EXPLAINED TO ME.

03:24PM 11 Q. DID YOU BELIEVE THAT, EVEN IF YOUR BLOOD WAS BEING DRAWN

03:24PM 12 FROM A VEIN, THE BLOOD WAS BEING TESTED ON A THERANOS ANALYZER?

03:25PM 13 A. THAT WAS OUR UNDERSTANDING.

03:25PM 14 MS. WALSH: OBJECTION. LEADING.

03:25PM 15 THE COURT: LEADING? WAS IT LEADING? IS THAT WHAT

03:25PM 16 YOU --

03:25PM 17 MS. WALSH: YES.

03:25PM 18 THE COURT: WHY DON'T YOU RE-ASK THE QUESTION?

03:25PM 19 MR. LEACH: I CAN ASK A BETTER QUESTION, YOUR HONOR.

03:25PM 20 Q. YOU HAD YOUR BLOOD DRAWN FROM THE VEIN IN THE PALO ALTO

03:25PM 21 WALGREENS; IS THAT RIGHT, MR. GROSSMAN?

03:25PM 22 A. YES.

03:25PM 23 Q. IN YOUR OWN MIND, DID YOU HAVE AN UNDERSTANDING OF WHAT

03:25PM 24 TYPE OF DEVICE YOUR BLOOD WOULD BE TESTED ON?

03:25PM 25 A. YES.

03:25PM 1 Q. WHAT WAS THAT?

03:25PM 2 A. IT WOULD HAVE BEEN TESTED ON THERANOS'S PROPRIETARY
03:25PM 3 TECHNOLOGY.

03:25PM 4 Q. SO WAS THERE ANYTHING ABOUT THE FACT THAT YOUR BLOOD WAS
03:25PM 5 BEING DRAWN FROM A VEIN THAT GAVE YOU REASON TO THINK THAT
03:25PM 6 THERANOS WAS USING SOME OTHER TYPE OF EQUIPMENT?

03:25PM 7 A. NO.

03:25PM 8 Q. LET ME DRAW YOUR ATTENTION, PLEASE, TO WHAT WE HAVE MARKED
03:26PM 9 AS EXHIBIT 5441.

03:26PM 10 DO YOU RECOGNIZE THIS?

03:26PM 11 A. IT'S AN EMAIL, YES.

03:26PM 12 Q. IS THIS AN EMAIL FROM YOU TO SOMEONE NAMED ADAM CLAMMER?

03:26PM 13 A. YES.

03:26PM 14 Q. AND WHO IS ADAM CLAMMER?

03:26PM 15 A. HE WAS A CONSULTANT AND A FRIEND, A PERSONAL FRIEND, AND
03:26PM 16 CONSULTANT THAT WE, WE -- THAT THERANOS APPROVED, AND WE
03:26PM 17 ADDED -- HE WAS, HE WAS INCLUDED IN THE CONFIDENTIALITY
03:26PM 18 AGREEMENTS.

03:27PM 19 AND SO -- AND HE WAS AN INDIVIDUAL THAT HAD INVESTED IN
03:27PM 20 COMPANIES IN THE HEALTH CARE SPACE IN HIS CAREER.

03:27PM 21 HE WASN'T REALLY AN EXPERT IN ANY ONE AREA OF THE LAB
03:27PM 22 SPACE, BUT HE HAD INVESTED IN LABORATORY COMPANIES EARLIER IN
03:27PM 23 HIS CAREER.

03:27PM 24 SO HE'S SOMEONE THAT WE BROUGHT IN TO BE ANOTHER SET OF
03:27PM 25 EYES ON OUR DUE DILIGENCE PROCESS.

03:27PM 1 Q. AND THERE'S AN ATTACHMENT, THERANOS_V12.XLSX.

03:27PM 2 DO YOU SEE THAT?

03:27PM 3 A. YES.

03:27PM 4 Q. AND WHAT IS THE ATTACHMENT?

03:27PM 5 A. THIS IS A FINANCIAL MODEL, OR A SIMPLE FINANCIAL MODEL --
03:27PM 6 OR A MODEL THAT WE HAD PUT TOGETHER, A FINANCIAL MODEL THAT WE
03:27PM 7 HAD BUILT WITH THREE DIFFERENT SCENARIOS THAT WE SENT IN.

03:27PM 8 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
03:27PM 9 EXHIBIT 5441.

03:27PM 10 MS. WALSH: NO OBJECTION.

03:27PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:27PM 12 (GOVERNMENT'S EXHIBIT 5441 WAS RECEIVED IN EVIDENCE.)

03:28PM 13 MR. LEACH: IF YOU COULD ZOOM IN ON THE TOP,
03:28PM 14 MS. WACHS.

03:28PM 15 Q. DO YOU SEE WHERE YOU WROTE TO MR. CLAMMER ON JANUARY 29TH,
03:28PM 16 2014, "CELL D113 ON PFM REV MODEL IS SCENARIO. 1, 2, 3, FOR
03:28PM 17 THE BEAR, BASE, BULL."

03:28PM 18 DO YOU SEE THAT?

03:28PM 19 A. YES.

03:28PM 20 Q. AND WHAT DID YOU MEAN BY BEAR, BASE, AND BULL?

03:28PM 21 A. THIS IS KIND OF A REFERENCE TO BAD, MIDDLE OF THE ROAD,
03:28PM 22 AND THEN A POSITIVE SCENARIO FOR THE FINANCIAL MODEL, BEAR
03:28PM 23 BEING -- OR REFERENCE BEAR MARKET, BAD OUTCOME; BASE CASE IS
03:28PM 24 KIND OF THE, WHAT WE -- SORT OF OUR AVERAGE VIEW, OUR AVERAGE
03:28PM 25 FORECAST; AND THEN BULL IS KIND OF LIKE BULL MARKET, AND THAT'S

03:28PM 1 THE UPSIDE, THE UPSIDE SCENARIO.

03:29PM 2 Q. AND WHEN YOU CALCULATE A BEAR CASE SCENARIO, WHAT IS THE
03:29PM 3 PURPOSE OF DOING THAT?

03:29PM 4 A. WHAT WE'RE TRYING TO DO IS TAKE OUR RESEARCH, ALL OF THE
03:29PM 5 QUALITATIVE INFORMATION THAT WE ACCUMULATE IN THE DUE DILIGENCE
03:29PM 6 PROCESS, AND THEN TRANSLATE THAT INTO A SET OF NUMBERS.

03:29PM 7 AND SO, YOU KNOW, FOR THE BEAR CASE, WE WOULD WANT IT TO
03:29PM 8 REFLECT SOME OF THE, YOU KNOW, THE RISKS OR, YOU KNOW, THE --
03:29PM 9 ANYTHING THAT WE'D, IN THE DUE DILIGENCE PROCESS, IDENTIFIED
03:29PM 10 THAT COULD LEAD TO A LESS FAVORABLE FORECAST FOR THE BUSINESS.

03:29PM 11 WE TRY TO KIND OF INCORPORATE THAT INTO, INTO THAT
03:29PM 12 SCENARIO.

03:29PM 13 Q. LET ME DRAW YOUR ATTENTION, PLEASE, TO PAGE 44 OF THIS
03:29PM 14 DOCUMENT.

03:30PM 15 EXCUSE ME, MS. WACHS. 44. PERFECT.

03:30PM 16 AND IF WE CAN ZOOM IN ON THE TEXT.

03:30PM 17 DO YOU SEE THE THERANOS LOGO AT THE TOP OF THIS PAGE,
03:30PM 18 MR. GROSSMAN?

03:30PM 19 A. YES.

03:30PM 20 Q. AND YOU SAID THAT THE EXCEL FILE IS A MODEL THAT PFM PUT
03:30PM 21 TOGETHER.

03:30PM 22 DOES THE PFM MODEL ALSO INCLUDE THE PROJECTIONS THAT
03:30PM 23 THERANOS HAD PROVIDED TO YOU?

03:30PM 24 A. THAT'S CORRECT.

03:30PM 25 Q. AND IS THIS THE PORTION OF THE MODEL INCLUDING PROJECTIONS

03:30PM 1 THAT THERANOS HAD PROVIDED?

03:30PM 2 A. YES.

03:30PM 3 Q. AND ARE THESE NUMBERS THAT YOU HAD DISCUSSIONS WITH

03:30PM 4 MR. BALWANI ABOUT?

03:30PM 5 A. YES.

03:30PM 6 Q. OKAY. SO MUCH OF THIS DOCUMENT IS PREPARED BY PFM, BUT

03:30PM 7 THIS PORTION IS PREPARED BY THERANOS?

03:30PM 8 A. THAT IS CORRECT.

03:30PM 9 Q. OKAY. AND UP AT THE TOP THERE'S A ROW FOR 2014 DEVICE

03:30PM 10 COST PLUS INSTALLATION/CONFIG, AND THERE'S A NUMBER 70,000 TO

03:31PM 11 THE RIGHT.

03:31PM 12 DO YOU SEE THAT?

03:31PM 13 A. YES.

03:31PM 14 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN?

03:31PM 15 A. THAT'S THE COST OF, THE FULL COST OF THE MINILAB,

03:31PM 16 INCLUDING THE INSTALLATION, THE CONFIGURATION, THE TRAINING.

03:31PM 17 THAT WAS OUR UNDERSTANDING OF WHAT THAT NUMBER REFERRED

03:31PM 18 TO.

03:31PM 19 Q. OKAY. AND SAME QUESTION FOR THE NEXT ROW, 2015 DEVICE

03:31PM 20 COST?

03:31PM 21 A. YES.

03:31PM 22 Q. THAT RELATES TO THE MINILAB?

03:31PM 23 A. ALSO THE MINILAB. AS THEY MOVED TO HIGHER PRODUCTION

03:31PM 24 VOLUME, THE COST COMES DOWN.

03:31PM 25 Q. OKAY. AT ANY POINT IN TIME DURING YOUR DISCUSSION ABOUT

03:31PM 1 DEVICE COST, DID MR. BALWANI PROVIDE DEVICE COSTS FOR A SIEMENS
03:31PM 2 MACHINE?

03:31PM 3 A. NO.

03:31PM 4 Q. WOULD THAT HAVE BEEN RELEVANT TO YOUR INVESTMENT DECISION?

03:31PM 5 A. YES, IT WOULD HAVE.

03:31PM 6 Q. LET ME NEXT DRAW YOUR ATTENTION TO EXHIBIT 1482.

03:32PM 7 IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI
03:32PM 8 IN THE JANUARY 2014 TIME PERIOD?

03:32PM 9 A. YES.

03:32PM 10 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
03:32PM 11 EXHIBIT 1482.

03:32PM 12 MS. WALSH: NO OBJECTION.

03:32PM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
03:32PM 14 (GOVERNMENT'S EXHIBIT 1482 WAS RECEIVED IN EVIDENCE.)

03:32PM 15 MR. LEACH: AND IF WE CAN PLEASE GO TO PAGE 2,
03:32PM 16 MS. WACHS.

03:32PM 17 Q. I DRAW YOUR ATTENTION, MR. GROSSMAN, TO THE BOTTOM PORTION
03:32PM 18 WHERE YOU WROTE ON JANUARY 28TH, "SUNNY, JUST TO CONFIRM WE
03:32PM 19 STILL WOULD LIKE TO SEE THE NEWARK AND THE THERANOS CLIA LAB."

03:32PM 20 DO YOU SEE THAT LANGUAGE?

03:32PM 21 A. YES.

03:32PM 22 Q. AND IS THAT A REFERENCE TO WHAT WE TALKED ABOUT EARLIER,
03:32PM 23 THE TOUR THAT YOU GOT OF THE MANUFACTURING FACILITY AND THE
03:32PM 24 LAB?

03:32PM 25 A. YEAH, THE MANUFACTURING FACILITY IS LOCATED IN NEWARK JUST

03:33PM 1 OVER THE SAN MATEO BRIDGE, YES.

03:33PM 2 Q. OKAY. AND IF WE CAN GO UP THE CHAIN TO MR. BALWANI'S
03:33PM 3 EMAIL AT THE TOP.

03:33PM 4 DO YOU SEE WHERE MR. BALWANI WROTE, "WE CAN WALK YOU
03:33PM 5 THROUGH PART OF THE LAB WHERE WE HAVE DOZENS OF DEVICES BEING
03:33PM 6 USED. HOWEVER, AS WE CHATTED BEFORE, IF YOU CAN LIMIT THIS TO
03:33PM 7 YOU AND VIKRAM, THAT WOULD BE APPRECIATED. THANKS."

03:33PM 8 DO YOU SEE THAT?

03:33PM 9 A. YES.

03:33PM 10 Q. VIKRAM, IS THAT SOMEONE ON YOUR TEAM?

03:33PM 11 A. HE'S REFERRING TO VIVEK. I GUESS HE DIDN'T REMEMBER HIS
03:33PM 12 NAME. BUT, YES --

03:33PM 13 Q. OKAY.

03:33PM 14 A. HE'S REFERRING TO VIVEK KHANNA, WHO HAS BEEN PART OF OUR
03:33PM 15 DUE DILIGENCE TEAM THE WHOLE TIME. BUT THAT'S, THAT'S WHO
03:33PM 16 VIKRAM IS SUPPOSED TO REFERENCE.

03:33PM 17 Q. OKAY. AND, AGAIN, WHEN YOU WERE IN THE LAB, DID
03:33PM 18 MR. BALWANI DRAW YOUR ATTENTION TO ANY SIEMENS DEVICES?

03:33PM 19 A. NO, HE DID NOT DRAW OUR ATTENTION TO ANY SIEMENS DEVICES.

03:34PM 20 Q. WOULD THAT HAVE BEEN A RED FLAG FOR YOU?

03:34PM 21 A. THAT WOULD HAVE BEEN A RED FLAG.

03:34PM 22 Q. DID PFM ULTIMATELY INVEST IN THERANOS?

03:34PM 23 A. YES, WE DID.

03:34PM 24 Q. OKAY. LET ME DRAW YOUR ATTENTION TO WHAT HAS BEEN MARKED
03:34PM 25 AS EXHIBIT 1505.

03:34PM 1 DO YOU HAVE THAT IN FRONT OF YOU, MR. GROSSMAN?

03:34PM 2 A. I DO, YES.

03:34PM 3 Q. IS THIS SOMETHING CALLED SERIES C2 PREFERRED STOCK
03:34PM 4 PURCHASE AGREEMENT?

03:34PM 5 A. YES.

03:34PM 6 Q. AND DOES THIS RELATE TO PFM'S INVESTMENT IN THERANOS?

03:34PM 7 A. YES.

03:34PM 8 MR. LEACH: THE GOVERNMENT OFFERS EXHIBIT 1505.

03:34PM 9 MS. WALSH: NO OBJECTION.

03:34PM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
03:34PM 11 (GOVERNMENT'S EXHIBIT 1505 WAS RECEIVED IN EVIDENCE.)

03:34PM 12 MR. LEACH: LET'S START WITH PAGE 1, MS. WACHS.

03:34PM 13 Q. AND DO YOU SEE THAT THIS AGREEMENT STARTS WITH SECTION 1,
03:35PM 14 MR. GROSSMAN?

03:35PM 15 A. YES.

03:35PM 16 Q. I'D LIKE TO GO TO SECTION 4, WHICH BEGINS ON PAGE 6.

03:35PM 17 DO YOU SEE THAT THIS IS TITLED REPRESENTATIONS AND
03:35PM 18 WARRANTIES OF THE INVESTORS?

03:35PM 19 A. YES.

03:35PM 20 Q. AND IN THIS DOCUMENT, PFM AND ITS FUND IS THE INVESTOR?

03:35PM 21 A. I BELIEVE THAT'S RIGHT.

03:35PM 22 Q. OKAY. AND IF WE LOOK AT PAGE 7.

03:35PM 23 DO YOU SEE THAT THERE ARE A NUMBER OF REPRESENTATIONS FROM
03:35PM 24 4.2 TO 4.6 RELATING TO INVESTMENT INTENT, INVESTMENT
03:35PM 25 EXPERIENCE, SPECULATIVE NATURE OF INVESTMENTS, ACCESS TO DATA,

03:35PM 1 AND ACCREDITED INVESTOR?

03:35PM 2 DO YOU SEE THOSE?

03:35PM 3 A. YES.

03:35PM 4 Q. AND ALL -- WOULD THESE REPRESENTATIONS HAVE BEEN -- IF PFM
03:35PM 5 SIGNED THIS, WOULD THOSE REPRESENTATIONS HAVE BEEN TRUE AT THE
03:35PM 6 TIME?

03:35PM 7 A. YES.

03:35PM 8 Q. OKAY. LET'S LOOK AT EXHIBIT 1506.

03:36PM 9 IS THIS THE DOCUMENT WHEREBY PFM REPRESENTS ITS AGREEMENT
03:36PM 10 TO THE STOCK PURCHASE AGREEMENT?

03:36PM 11 A. I BELIEVE THAT IS THE CASE, YES.

03:36PM 12 Q. OKAY.

03:36PM 13 THE GOVERNMENT OFFERS EXHIBIT 1506.

03:36PM 14 MS. WALSH: NO OBJECTION.

03:36PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:36PM 16 (GOVERNMENT'S EXHIBIT 1506 WAS RECEIVED IN EVIDENCE.)

03:36PM 17 MR. LEACH: AND IF WE CAN ZOOM IN ON THE TOP HALF,
03:36PM 18 MS. WACHS, ALL OF THE WAY DOWN TO THE DATE, FEBRUARY 4TH, 2014.

03:36PM 19 Q. OKAY. THIS IS SIGNED BY SOMEBODY NAMED ERIC MOORE. WHO
03:36PM 20 WAS ERIC MOORE?

03:36PM 21 A. HE WAS THE CHIEF FINANCIAL OFFICER OF OUR FIRM AT THE
03:36PM 22 TIME, AND I THINK HE WAS A DESIGNATED SIGNATORY FOR OUR FIRM.

03:36PM 23 Q. OKAY. AND ABOVE THE SIGNATURE IT READS, "I ACKNOWLEDGE
03:37PM 24 AND AGREE THAT I AM INVESTING THE AGGREGATE DOLLAR VALUE OF
03:37PM 25 \$55,479,993."

03:37PM 1 DO YOU SEE THAT?

03:37PM 2 A. YES.

03:37PM 3 Q. AND THIS IS SIGNED ON BEHALF OF SOMETHING CALLED
03:37PM 4 PARTNERSHIP INVESTMENTS LP.

03:37PM 5 WHAT IS THAT?

03:37PM 6 A. PARTNER INVESTMENTS LP IS A FUND THAT WE USE TO COINVEST
03:37PM 7 ALONGSIDE OUR HEDGE FUND.

03:37PM 8 SO THIS IS FOR PEOPLE THAT -- TYPICALLY WHEN WE HAVE
03:37PM 9 EXCESS CAPACITY BEYOND WHAT OUR HEDGE FUND WOULD NEED, WE WILL
03:37PM 10 OFFER THAT CAPACITY TO BOTH EXISTING INVESTORS AND THOSE -- AND
03:37PM 11 PEOPLE WHO MAY NOT BE AN EXISTING INVESTOR.

03:37PM 12 WE AGGREGATE ALL OF THOSE INVESTMENT DOLLARS INTO THIS ONE
03:37PM 13 ENTITY SO THAT WE THEN WRITE ONE ADDITIONAL CHECK TO THE
03:37PM 14 COMPANY, AND IT MAKES IT EASIER FOR THE COMPANY TO -- AS
03:38PM 15 OPPOSED TO DEALING WITH ALL OF THE INDIVIDUALS.

03:38PM 16 Q. AND DOES THIS ACCURATELY CAPTURE THE DATE AND THE AMOUNT
03:38PM 17 OF THE INVESTMENT BY PARTNER INVESTMENTS LP?

03:38PM 18 A. YES.

03:38PM 19 Q. OKAY. LET'S GO DOWN FURTHER, MS. WACHS.

03:38PM 20 DO YOU SEE WHERE IT SAYS, "I ACKNOWLEDGE AND AGREE THAT I
03:38PM 21 AM INVESTING THE AGGREGATE DOLLAR VALUE OF \$38,336,632 TO
03:38PM 22 PURCHASE A TOTAL OF," AND THEN THERE'S A NUMBER OF "SHARES OF
03:38PM 23 THE COMPANY'S SERIES C-2 PREFERRED STOCK."

03:38PM 24 DO YOU SEE THAT?

03:38PM 25 A. YES.

03:38PM 1 Q. AND THIS IS ON BEHALF OF SOMETHING CALLED PFM HEALTH CARE
03:38PM 2 MASTER FUND LP.

03:38PM 3 WHAT IS THAT?

03:38PM 4 A. THAT'S THE ACTUAL HEDGE FUND, THE INSTITUTIONAL FUND THAT
03:38PM 5 WE OPERATE. SO THIS WOULD BE THE FUND WHERE THE PENSION PLANS,
03:38PM 6 THEY WOULD INVEST THROUGH THIS VEHICLE.

03:39PM 7 Q. AND DID YOU MAKE THE DECISION TO INVEST 38 MILLION IN
03:39PM 8 THERANOS ON BEHALF OF PFM HEALTH CARE MASTER FUND?

03:39PM 9 A. YES.

03:39PM 10 Q. AND DOES THIS ACCURATELY REFLECT THE DATE OF THE
03:39PM 11 INVESTMENT?

03:39PM 12 A. YES.

03:39PM 13 Q. AND FURTHER DOWN BELOW IT SAYS, "I ACKNOWLEDGE AND AGREE
03:39PM 14 THAT I AM INVESTING THE AGGREGATE DOLLAR VALUE OF \$2,323,373."

03:39PM 15 DO YOU SEE THAT?

03:39PM 16 A. YES.

03:39PM 17 Q. AND THIS IS ON BEHALF OF SOMETHING CALLED PFM HEALTH CARE
03:39PM 18 PRINCIPALS FUND LP.

03:39PM 19 DO YOU SEE THAT?

03:39PM 20 A. YES.

03:39PM 21 Q. AND WHAT IS PFM HEALTH CARE PRINCIPALS FUND LP?

03:39PM 22 A. THIS IS WHAT WE CALLED OUR FRIENDS AND FAMILY FUND. THIS
03:39PM 23 IS FOR EMPLOYEES THAT DON'T MEET THE STANDARDS THAT ARE
03:39PM 24 REQUIRED, ASSET STANDARDS, THE INCOME STANDARDS THAT ARE
03:39PM 25 REQUIRED FOR THE MASTER FUND, THE INSTITUTIONAL FUND.

03:39PM 1 SO IT INCLUDES FRIENDS, FAMILY -- FRIENDS AND FAMILY,
03:39PM 2 EMPLOYEES THAT INVEST IN THE PRINCIPAL'S FUND, AND WE RUN THIS
03:40PM 3 FUND EXACTLY LIKE -- BOTH FUNDS ARE RUN SO THEY'RE EXACTLY
03:40PM 4 PARALLEL TO EACH OTHER, BUT THEY'RE SEPARATE LEGAL ENTITIES.
03:40PM 5 Q. OKAY. SO THREE SEPARATE PFM ENTITIES INVESTED IN THERANOS
03:40PM 6 IN EARLY FEBRUARY OF 2014?
03:40PM 7 A. YES.
03:40PM 8 Q. THANK YOU.
03:40PM 9 LET ME NEXT DRAW YOUR ATTENTION, PLEASE, TO EXHIBIT 5858.
03:40PM 10 A. I DON'T HAVE THAT.
03:40PM 11 Q. YOU DON'T HAVE THAT?
03:40PM 12 DO YOU HAVE THAT, YOUR HONOR?
03:40PM 13 THE COURT: NO. I DON'T THINK IT'S IN HIS BINDER.
03:41PM 14 BY MR. LEACH:
03:41PM 15 Q. BEFORE I ASK ABOUT THE DOCUMENT, LET ME ASK A PRELIMINARY
03:41PM 16 QUESTION.
03:41PM 17 SO YOU INVEST IN FEBRUARY OF 2014?
03:41PM 18 A. YES.
03:41PM 19 Q. AND I'D LIKE TO MOVE FORWARD IN TIME TO OCTOBER OF 2015.
03:41PM 20 DO YOU HAVE THAT TIME PERIOD IN MIND?
03:41PM 21 A. YES.
03:41PM 22 Q. IN OR AROUND THAT TIME PERIOD, DID YOU BECOME AWARE OF A
03:41PM 23 "WALL STREET JOURNAL" ARTICLE THAT HAD NEGATIVE INFORMATION
03:41PM 24 ABOUT THERANOS?
03:41PM 25 A. I KNOW EXACTLY WHERE I WAS STANDING WHEN I READ THE --

03:41PM 1 MS. WALSH: OBJECTION.

03:41PM 2 THE COURT: MR. GROSSMAN, I'M SORRY.

03:41PM 3 MS. WALSH: OBJECTION. 401, 403.

03:41PM 4 THE COURT: IS THIS ARTICLE IN EVIDENCE?

03:41PM 5 MR. LEACH: THE ARTICLE IS NOT. THE FACT OF THE

03:41PM 6 ARTICLE IS, AND THIS IS PREFATORY TO --

03:41PM 7 THE COURT: SO I'LL OVERRULE THIS OBJECTION, AND YOU

03:41PM 8 CAN ASK YOUR QUESTION AGAIN.

03:41PM 9 MR. LEACH: OKAY.

03:41PM 10 Q. DID YOU BECOME AWARE OF A NEWS ARTICLE RELATING TO

03:41PM 11 THERANOS IN OR AROUND OCTOBER OF 2015?

03:42PM 12 A. YES, I DID. I REMEMBER EXACTLY WHERE I WAS STANDING WHEN

03:42PM 13 I READ THE EMAIL, OR THE ARTICLE. I REMEMBER EXACTLY WHERE I

03:42PM 14 WAS STANDING WHEN I SAW AND READ THE STORY.

03:42PM 15 Q. ALSO IN THAT MONTH, OCTOBER OF 2015, DID YOU OBSERVE

03:42PM 16 ELIZABETH HOLMES MAKE STATEMENTS TO AT A "WALL STREET JOURNAL"

03:42PM 17 CONFERENCE?

03:42PM 18 A. YES.

03:42PM 19 Q. AND DURING THAT CONFERENCE, DID YOU TAKE NOTES OF WHAT

03:42PM 20 MS. HOLMES WAS SAYING?

03:42PM 21 A. YES.

03:42PM 22 Q. OKAY. LET ME DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED

03:42PM 23 AS EXHIBIT 2894.

03:42PM 24 DO YOU KNOW WHAT THIS DOCUMENT IS, MR. GROSSMAN?

03:42PM 25 A. YES, I DO.

03:43PM 1 Q. OKAY. ARE THESE NOTES THAT YOU PREPARED ON OR ABOUT
03:43PM 2 OCTOBER 21ST, 2015?

03:43PM 3 A. YES.

03:43PM 4 Q. OKAY. ARE THEY YOUR NOTES OF WHAT YOU OBSERVED AND HEARD
03:43PM 5 MS. HOLMES SAYING AT A CONFERENCE ON OR ABOUT OCTOBER 21ST,
03:43PM 6 2015?

03:43PM 7 A. YES.

03:43PM 8 Q. DURING THAT CONFERENCE, DID MS. HOLMES MAKE STATEMENTS TO
03:43PM 9 THE EFFECT THAT THERANOS HAD NEVER USED COMMERCIALY BASED LAB
03:43PM 10 EQUIPMENT FOR FINGERSTICK SAMPLES?

03:43PM 11 MS. WALSH: OBJECTION.

03:43PM 12 THE COURT: OVERRULED.

03:43PM 13 THE WITNESS: YES.

03:43PM 14 BY MR. LEACH:

03:43PM 15 Q. SHE DID MAKE STATEMENTS TO THAT EFFECT?

03:43PM 16 A. YES.

03:43PM 17 Q. OKAY. AND THIS WAS ON OCTOBER 21ST, 2015?

03:43PM 18 A. YES.

03:43PM 19 Q. OKAY. LET ME --

03:43PM 20 WITH THE COURT'S PERMISSION, I WOULD LIKE TO DISPLAY WHAT
03:43PM 21 IS IN EVIDENCE AS EXHIBIT 5387H.

03:43PM 22 THE COURT: 5387H?

03:44PM 23 MR. LEACH: YEAH, WHICH IS IN EVIDENCE.

03:44PM 24 THE COURT: YES.

03:44PM 25 MR. LEACH: AND IF WE CAN GO TO PAGE 122, MS. WACHS.

03:44PM 1 Q. MR. GROSSMAN, I'M DISPLAYING SOME TEXT MESSAGES BETWEEN
03:44PM 2 MR. BALWANI AND MS. HOLMES.

03:44PM 3 YOU HAVEN'T SEEN THESE BEFORE, HAVE YOU?

03:44PM 4 A. NO.

03:44PM 5 Q. YOU WEREN'T A PARTY TO THESE?

03:44PM 6 A. NO.

03:44PM 7 Q. OKAY. AND DO YOU SEE TO THE LEFT THERE'S A DATE
03:44PM 8 OCTOBER 21ST, 2015?

03:44PM 9 A. YES.

03:44PM 10 Q. AND THAT'S THE DATE OF "THE WALL STREET JOURNAL"
03:44PM 11 CONFERENCE WHERE MS. HOLMES WAS MAKING STATEMENTS?

03:44PM 12 A. YES.

03:44PM 13 Q. AND DO YOU SEE WHERE MR. BALWANI WROTE, "WORRIED ABOUT
03:44PM 14 YOUR QUOTE ALL FINGERSTICKS ON OUR TECHNOLOGY UNQUOTE COMMENT."

03:45PM 15 DO YOU SEE THAT LANGUAGE?

03:45PM 16 A. YES.

03:45PM 17 Q. OKAY.

03:45PM 18 MAY I HAVE A MOMENT, YOUR HONOR?

03:45PM 19 THE COURT: YES.

03:45PM 20 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

03:45PM 21 MR. LEACH: THANK YOU, MS. WACHS. WE CAN TAKE THAT
03:45PM 22 DOWN.

03:45PM 23 YOUR HONOR, I'D LIKE TO DISPLAY TO MR. GROSSMAN ONLY AND
03:45PM 24 TO THE COURT WHAT WE HAVE MARKED AS EXHIBIT 5858.

03:45PM 25 THE COURT: ALL RIGHT.

03:45PM 1 BY MR. LEACH:

03:45PM 2 Q. ARE YOU ABLE TO SEE THAT ON THE SCREEN, MR. GROSSMAN?

03:45PM 3 A. NOT YET.

03:45PM 4 OH, OKAY.

03:45PM 5 Q. AND IF WE CAN GO TO PAGE 1.

03:46PM 6 AND I WOULD JUST LIKE YOU TO READ TO YOURSELF THE TITLE OF

03:46PM 7 THE DOCUMENTS IN BOLD ROUGHLY HALF OF THE WAY DOWN.

03:46PM 8 A. OKAY.

03:46PM 9 Q. DO YOU KNOW WHAT THIS DOCUMENT IS?

03:46PM 10 A. YES.

03:46PM 11 Q. OKAY. AND IF I COULD DRAW YOUR ATTENTION TO PAGE 40.

03:46PM 12 DO YOU SEE THAT THERE'S A LINE FOR AN INDIVIDUAL TO SIGN?

03:46PM 13 A. YES.

03:46PM 14 Q. OKAY. AND ARE YOU FAMILIAR WITH THE NAME THERE?

03:46PM 15 A. YES.

03:46PM 16 Q. OKAY. LET ME NEXT ASK YOU TO GO TO PAGE 7.

03:46PM 17 DO YOU SEE THAT THIS IS A -- HALFWAY THROUGH THE PAGE,

03:47PM 18 THERE'S A QUESTION, AND THEN BENEATH THAT THERE'S A BULLET

03:47PM 19 HEADING AND THEN ANSWER?

03:47PM 20 A. YES.

03:47PM 21 Q. AND DO YOU BELIEVE THIS TO BE A --

03:47PM 22 WELL, YOUR HONOR, THE GOVERNMENT OFFERS PAGE 7 OF THIS

03:47PM 23 DOCUMENT WITH JUST THE QUESTION NUMBER 7 AND THE ANSWER TO

03:47PM 24 QUESTION NUMBER 7.

03:47PM 25 (PAUSE IN PROCEEDINGS.)

03:47PM 1 MS. WALSH: YES, YOUR HONOR.

03:47PM 2 YOUR HONOR, IF WE CAN REDACT THE HEADINGS AND KEEP ONLY

03:47PM 3 THE PARAGRAPH STARTING WITH "DESCRIBE," AND THEN THE PARAGRAPH

03:47PM 4 STARTING WITH "MR.," BUT REDACTING "SUBJECT TO," I THINK THAT

03:47PM 5 WOULD CLEAR UP ISSUES THAT WE TALKED ABOUT EARLIER.

03:48PM 6 THE COURT: MR. LEACH.

03:48PM 7 MR. LEACH: I'M FINE WITH THOSE REDACTIONS,

03:48PM 8 YOUR HONOR.

03:48PM 9 THE COURT: I'M SORRY. DID YOU TIME STAMP THIS?

03:48PM 10 MR. LEACH: I DID NOT, YOUR HONOR, BUT I'M PLEASED

03:48PM 11 TO DO THAT.

03:48PM 12 THE COURT: OKAY. WITH THOSE AGREED-UPON

03:48PM 13 REDACTIONS, THIS WILL BE ADMITTED.

03:48PM 14 MR. LEACH: MAY I CONSULT WITH MS. WACHS FOR ONE

03:48PM 15 MOMENT --

03:48PM 16 THE COURT: YES.

03:48PM 17 MR. LEACH: -- BECAUSE I WANT TO MAKE SURE.

03:48PM 18 THE COURT: OF COURSE.

03:49PM 19 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

03:49PM 20 MR. LEACH: YOUR HONOR, I THINK WE MADE THE

03:49PM 21 APPROPRIATE REDACTIONS, AND IF I COULD --

03:49PM 22 THE COURT: LET ME ASK YOU, YOU'VE CONSULTED WITH

03:49PM 23 MS. WALSH ABOUT THE REDACTIONS, AND YOU'RE IN AGREEMENT?

03:49PM 24 MS. WALSH: YES, YOUR HONOR.

03:49PM 25 THE COURT: ALL RIGHT. THANK YOU.

03:49PM 1 THIS IS ADMITTED, AND IT MAY BE PUBLISHED.

03:49PM 2 (GOVERNMENT'S EXHIBIT 5858, REDACTED, WAS RECEIVED IN

03:49PM 3 EVIDENCE.)

03:49PM 4 THE COURT: IS THAT UP ON THE SCREEN? NOT YET.

03:49PM 5 IT'S NOT UP ON THE JURY'S SCREENS YET.

03:49PM 6 THE CLERK: NOW IT IS.

03:49PM 7 THE COURT: OKAY.

03:49PM 8 BY MR. LEACH:

03:49PM 9 Q. MR. GROSSMAN, DO YOU SEE UP AT THE TOP IT SAYS, "DESCRIBE

03:49PM 10 YOUR OWNERSHIP STAKE IN THERANOS, INCLUDING WITHOUT ANY

03:49PM 11 LIMITATION ANY STOCK OPTIONS."

03:50PM 12 DO YOU SEE THAT?

03:50PM 13 A. YES.

03:50PM 14 Q. AND DO YOU UNDERSTAND THE REMAINDER OF THE TEXT TO BE A

03:50PM 15 STATEMENT THAT MR. BALWANI MADE ABOUT HIS OWNERSHIP OF

03:50PM 16 THERANOS'S STOCK?

03:50PM 17 A. YES.

03:50PM 18 Q. AND IT READS, "MR. BALWANI RESPONDS AS FOLLOWS:

03:50PM 19 "MR. BALWANI CURRENTLY OWNS 28,716,815 SHARES OF CLASS A

03:50PM 20 COMMON STOCK," AND THEN IT CONTINUES.

03:50PM 21 DO YOU SEE THAT?

03:50PM 22 A. YES.

03:50PM 23 Q. AND DO YOU UNDERSTAND THIS TO BE A STATEMENT THAT

03:50PM 24 MR. BALWANI MADE?

03:50PM 25 A. YES.

03:50PM 1 Q. OKAY. AND THEN IF I COULD DRAW -- WITHOUT DISPLAYING IT
03:50PM 2 ON THE SCREEN, I JUST -- WELL, DO YOU UNDERSTAND THIS TO BE
03:50PM 3 MADE AT SOME POINT AFTER OCTOBER 15TH, 2015?

03:50PM 4 A. YES.

03:50PM 5 Q. THANK YOU, MR. GROSSMAN.

03:50PM 6 THANK YOU, YOUR HONOR.

03:50PM 7 I DON'T HAVE ANYTHING FURTHER.

03:50PM 8 THE COURT: CROSS-EXAMINATION?

03:50PM 9 MS. WALSH: YES, YOUR HONOR.

03:51PM 10 MAY I REMOVE MY MASK, YOUR HONOR?

03:51PM 11 THE COURT: YES. YES.

03:51PM 12 **CROSS-EXAMINATION**

03:51PM 13 BY MS. WALSH:

03:51PM 14 Q. GOOD AFTERNOON, MR. GROSSMAN.

03:51PM 15 A. GOOD AFTERNOON.

03:51PM 16 Q. MY NAME IS AMY WALSH, AND I REPRESENT SUNNY BALWANI.

03:51PM 17 SO WHAT I WANT TO ASK YOU ABOUT JUST FOR THE REMAINDER OF
03:51PM 18 THE AFTERNOON -- I THINK WE'RE GOING TO HAVE TO CONTINUE THIS
03:51PM 19 TOMORROW -- BUT WHAT I WANT TO START WITH IS YOUR BACKGROUND.

03:51PM 20 I KNOW YOU TESTIFIED TO THAT ON DIRECT.

03:52PM 21 BUT -- SO AFTER YOU GRADUATED FROM COLLEGE, YOU WORKED AT
03:52PM 22 JP MORGAN; IS THAT RIGHT?

03:52PM 23 A. YES.

03:52PM 24 Q. AND YOU WORKED THERE AS A RESEARCH ANALYST; CORRECT?

03:52PM 25 A. THE FIRST TWO YEARS I WAS A RESEARCH ASSISTANT, PORTFOLIO

03:52PM 1 ASSISTANT, AND THEN THE LAST THREE YEARS I WAS A RESEARCH
03:52PM 2 ANALYST.

03:52PM 3 Q. OKAY. SO YOU WERE A RESEARCH ANALYST FOR THE LAST THREE
03:52PM 4 YEARS; RIGHT?

03:52PM 5 A. YES.

03:52PM 6 Q. OKAY. AND WHEN YOU WERE A RESEARCH ANALYST, YOU COVERED
03:52PM 7 THE HEALTH CARE SECTOR; IS THAT RIGHT?

03:52PM 8 A. YES.

03:52PM 9 Q. OKAY. AND THEN YOU WENT ON TO WORK FOR TWO DIFFERENT
03:52PM 10 HEDGE FUNDS; IS THAT CORRECT?

03:52PM 11 A. IT WAS ACTUALLY THREE, BUT, YES.

03:52PM 12 Q. OKAY. THREE.

03:52PM 13 AND IN -- FOR THOSE THREE HEDGE FUNDS, YOU WERE ALSO AN
03:52PM 14 ANALYST; IS THAT RIGHT?

03:52PM 15 A. FOR THE FIRST, I WAS AN ANALYST FROM 2001 THROUGH 2007,

03:53PM 16 2008; AND THEN AT THAT POINT I HANDED OFF MY ANALYST

03:53PM 17 RESPONSIBILITIES TO ANOTHER INDIVIDUAL AND MY PRIMARY FOCUS AT
03:53PM 18 THAT POINT WAS AS A PORTFOLIO MANAGER.

03:53PM 19 Q. OKAY.

03:53PM 20 A. FOR A FEW YEARS I DID BOTH.

03:53PM 21 Q. SO LET'S TAKE THEM ONE AT A TIME.

03:53PM 22 SO YOU WENT TO THE FIRST HEDGE FUND; CORRECT?

03:53PM 23 A. YES.

03:53PM 24 Q. AND YOU WERE AN ANALYST THERE; RIGHT?

03:53PM 25 A. YES.

03:53PM 1 Q. AND WHILE YOU WERE AN ANALYST, YOU COVERED THE HEALTH CARE
03:53PM 2 SECTOR; IS THAT RIGHT?

03:53PM 3 A. YES.

03:53PM 4 Q. AND THEN YOU WENT ON TO THE SECOND HEDGE FUND; IS THAT
03:53PM 5 RIGHT?

03:53PM 6 A. YES.

03:53PM 7 Q. AND YOU ALSO WORKED AS AN ANALYST THERE; CORRECT?

03:53PM 8 A. YES.

03:53PM 9 Q. AND AS AN ANALYST THERE, YOU ALSO COVERED THE HEALTH CARE
03:53PM 10 SECTOR; IS THAT RIGHT?

03:53PM 11 A. YES.

03:53PM 12 Q. OKAY. AND THEN YOU WENT ON TO A THIRD HEDGE FUND; IS THAT
03:53PM 13 RIGHT?

03:53PM 14 A. YES.

03:53PM 15 Q. AND YOU WERE AN ANALYST AT THAT HEDGE FUND, OR SOMETHING
03:53PM 16 DIFFERENT?

03:53PM 17 A. I WAS AN ANALYST AT THAT HEDGE FUND, AND THEN BECAME A
03:53PM 18 PORTFOLIO MANAGER AT THAT HEDGE FUND.

03:54PM 19 Q. OKAY. BUT ALSO COVERING THE HEALTH CARE SECTOR; IS THAT
03:54PM 20 RIGHT?

03:54PM 21 A. YES.

03:54PM 22 Q. OKAY. AND THEN AT SOME POINT YOU AND YOUR COLLEAGUES
03:54PM 23 STARTED PFM; CORRECT?

03:54PM 24 A. YES.

03:54PM 25 Q. OKAY. AND I THINK YOU SAID THIS ON DIRECT, BUT YOU'RE THE

03:54PM 1 MANAGING PARTNER OF PFM; RIGHT?

03:54PM 2 A. YES.

03:54PM 3 Q. AND YOU'RE THE CHIEF INVESTMENT OFFICER; RIGHT?

03:54PM 4 A. YES.

03:54PM 5 Q. AND PFM HEALTH SCIENCES IS AN S.E.C. REGISTERED INVESTMENT

03:54PM 6 ADVISOR; CORRECT?

03:54PM 7 A. YES.

03:54PM 8 Q. AND SO THAT'S A REGULATED ENTITY; CORRECT?

03:54PM 9 A. YES.

03:54PM 10 Q. AND AS THAT REGULATED ENTITY, YOU HAVE TO FILE CERTAIN

03:54PM 11 DISCLOSURES WITH THE S.E.C.; RIGHT?

03:54PM 12 A. YES.

03:54PM 13 Q. AND SO THROUGHOUT ALL OF THIS EXPERIENCE, YOU HAVE ABOUT

03:54PM 14 20 YEARS OF EXPERIENCE IN THE BIOTECH SPACE; IS THAT FAIR?

03:54PM 15 A. YEAH, THAT'S, THAT'S, THAT'S ACCURATE.

03:55PM 16 Q. OKAY. AND YOU ALSO HAVE ABOUT 20 YEARS EXPERIENCE

03:55PM 17 INVESTING IN HEALTH CARE COMPANIES; IS THAT RIGHT?

03:55PM 18 A. A LITTLE BIT LONGER THAN THAT, BUT, YES.

03:55PM 19 Q. OKAY. AND THOSE HEALTH CARE COMPANIES THAT YOU'VE

03:55PM 20 INVESTED IN HAVE BEEN VARIOUS DIFFERENT SIZES; IS THAT RIGHT?

03:55PM 21 A. YES.

03:55PM 22 Q. SOME HAVE BEEN PUBLIC COMPANIES; RIGHT?

03:55PM 23 A. YES.

03:55PM 24 Q. LARGE ONES LIKE PFIZER AND UNITED HEALTH; RIGHT?

03:55PM 25 A. YES.

03:55PM 1 Q. AND SMALL STARTUPS; IS THAT RIGHT?

03:55PM 2 A. YES.

03:55PM 3 Q. AND SIZES IN BETWEEN THOSE TWO ENDS OF THE SPECTRUM;

03:55PM 4 CORRECT?

03:55PM 5 A. YES.

03:55PM 6 Q. OKAY. AND WE JUST WENT THROUGH, OR MR. LEACH TOOK YOU

03:55PM 7 THROUGH THE THREE DIFFERENT ENTITIES THAT INVESTED IN THERANOS.

03:55PM 8 DO YOU REMEMBER THAT?

03:55PM 9 A. YES.

03:55PM 10 Q. AND I JUST WANT TO RUN THROUGH THOSE TO MAKE SURE I'M

03:55PM 11 CLEAR ON IT.

03:55PM 12 ONE WAS PARTNER INVESTMENTS LP; CORRECT?

03:56PM 13 A. YES.

03:56PM 14 Q. AND THEN THERE WAS HEALTH CARE MASTER FUND; RIGHT?

03:56PM 15 A. YES.

03:56PM 16 Q. AND THEN THE PFM HEALTH CARE PRINCIPALS FUND LP; RIGHT?

03:56PM 17 A. YES.

03:56PM 18 Q. OKAY. AND THE HEALTH CARE MASTER FUND WAS THE LARGEST OF

03:56PM 19 THE THREE; IS THAT RIGHT?

03:56PM 20 A. IT'S, IT'S QUITE -- I WANT TO ANSWER THE QUESTION. THE

03:56PM 21 PARTNER INVESTMENTS ISN'T A FUND IN THE SENSE -- IT'S A

03:56PM 22 DIFFERENT ENTITY. THERE'S NO -- WE -- SO HERE'S HOW I WOULD

03:56PM 23 ANSWER THE QUESTION. SORRY. BUT --

03:56PM 24 Q. I DON'T MEAN TO INTERRUPT YOU.

03:56PM 25 MY QUESTION WAS ABOUT HEALTH CARE MASTER FUND.

03:56PM 1 A. YEAH, MASTER FUND IS THE LARGEST -- LARGER THAN
03:56PM 2 PRINCIPALS.
03:56PM 3 PARTNER INVESTMENT HAS NO CAPITAL. IT'S JUST A FUND THAT
03:56PM 4 HAS INDIVIDUAL DEALS THAT WE DO -- HAVE DONE OVER TIME.
03:57PM 5 SO IF YOU ADD UP THE DEALS THAT WERE IN PARTNER INVESTMENT
03:57PM 6 AT THAT TIME, IT WAS A MUCH SMALLER FUND THAN THE HEALTH CARE
03:57PM 7 MASTER FUND.
03:57PM 8 Q. OKAY. SO I JUST WANT TO FOCUS ON HEALTH CARE MASTER FUND
03:57PM 9 FOR THE TIME BEING. OKAY?
03:57PM 10 A. OKAY.
03:57PM 11 Q. AND THAT'S THE LARGEST ONE; RIGHT?
03:57PM 12 A. YES.
03:57PM 13 Q. AND THE INVESTORS IN THAT FUND INCLUDED FAMILY OFFICES;
03:57PM 14 RIGHT?
03:57PM 15 A. YES.
03:57PM 16 Q. INSTITUTIONAL INVESTORS; CORRECT?
03:57PM 17 A. YES.
03:57PM 18 Q. AND HIGH NET WORTH INDIVIDUALS; IS THAT RIGHT?
03:57PM 19 A. YES.
03:57PM 20 Q. AND YOU WERE THE PORTFOLIO MANAGER OF THAT FUND; IS THAT
03:57PM 21 CORRECT?
03:57PM 22 A. YES.
03:57PM 23 Q. AND SO YOU, AS PORTFOLIO MANAGER, HAD THE ULTIMATE
03:57PM 24 AUTHORITY TO MAKE DECISIONS ABOUT INVESTMENTS; IS THAT TRUE?
03:57PM 25 A. YES.

03:57PM 1 Q. OKAY. AND WHEN THE INVESTORS IN THAT FUND GIVE YOU THEIR
03:57PM 2 MONEY, THEY, THEY NO LONGER HAVE CONTROL OF THEIR MONEY; IS
03:57PM 3 THAT CORRECT?

03:57PM 4 A. YES.

03:57PM 5 Q. AND WHAT THE FUND INVESTS IN IS YOUR DECISION; IS THAT
03:58PM 6 RIGHT?

03:58PM 7 A. WELL, WE HAVE FUND GUIDELINES THAT WE HAVE TO OPERATE
03:58PM 8 WITHIN.

03:58PM 9 SO WE HAVE LIMITS TO WHAT WE CAN INVEST IN, WHERE WE CAN
03:58PM 10 INVEST, JUST LIKE ANY FUND WOULD HAVE.

03:58PM 11 Q. OKAY. BUT WITHIN THOSE GUIDELINES, YOU ARE THE ULTIMATE
03:58PM 12 DECISION-MAKER; IS THAT RIGHT?

03:58PM 13 A. YES.

03:58PM 14 Q. OKAY. SO NOW I WANT TO TURN TO THE DUE DILIGENCE PROCESS
03:58PM 15 THAT YOU ENGAGED IN REGARDING THERANOS?

03:58PM 16 A. OKAY.

03:58PM 17 Q. YOU HAD A TEAM OF PEOPLE WORKING WITH YOU; CORRECT?

03:58PM 18 A. YES.

03:58PM 19 Q. AND I WANT TO JUST RUN THROUGH SOME OF THOSE TEAM MEMBERS
03:58PM 20 AND THEIR BACKGROUND TO THE EXTENT THAT YOU KNOW.

03:58PM 21 CHRIS JAMES WAS -- CHRIS JAMES WAS YOUR PARTNER AT PFM; IS
03:58PM 22 THAT RIGHT?

03:58PM 23 A. YES.

03:58PM 24 Q. AND HE WAS ANOTHER PORTFOLIO MANAGER AT PFM; IS THAT
03:58PM 25 RIGHT?

03:58PM 1 A. YES.

03:59PM 2 Q. IS HE STILL THERE?

03:59PM 3 A. NO.

03:59PM 4 Q. AND AT THE TIME, HE DEFERRED TO YOU ON INVESTMENTS IN

03:59PM 5 HEALTH CARE COMPANIES; CORRECT?

03:59PM 6 A. YES.

03:59PM 7 Q. AND THAT WAS BECAUSE OF YOUR BACKGROUND IN THE HEALTH CARE

03:59PM 8 SECTOR; RIGHT?

03:59PM 9 A. YES.

03:59PM 10 Q. OKAY. THEN THERE WAS ANOTHER GENTLEMAN NAMED

03:59PM 11 VIVEK KHANNA; RIGHT?

03:59PM 12 A. YES.

03:59PM 13 Q. AND HE WAS A SENIOR ANALYST AT PFM; CORRECT?

03:59PM 14 A. YES.

03:59PM 15 Q. AND HE ALSO HAD SIGNIFICANT EXPERIENCE IN THE HEALTH CARE

03:59PM 16 FIELD; RIGHT?

03:59PM 17 A. YES.

03:59PM 18 Q. HE HAD -- HIS EXPERIENCE SPANS 20 OR MORE YEARS WITH

03:59PM 19 HEALTH CARE COMPANIES; IS THAT RIGHT?

03:59PM 20 A. I BELIEVE THAT'S RIGHT, YES.

03:59PM 21 Q. OKAY. AND HE FOCUSSED -- HIS CAREER FOCUSSED ON HEALTH

03:59PM 22 CARE COMPANIES, BUT ALSO ONCE HE GOT TO PFM, THAT'S WHAT HE

03:59PM 23 FOCUSSED ON; RIGHT?

03:59PM 24 A. YES.

03:59PM 25 Q. OKAY. AND THEN THERE WAS ANOTHER GENTLEMAN NAMED

03:59PM 1 ALEX RABODZEY; IS THAT CORRECT?

04:00PM 2 A. YES.

04:00PM 3 Q. AND HE WAS ANOTHER SENIOR ANALYST AT PFM; RIGHT?

04:00PM 4 A. YES.

04:00PM 5 Q. NOW, HE HAD -- I BELIEVE IT'S DR. RABODZEY; RIGHT?

04:00PM 6 A. I BELIEVE THAT'S RIGHT.

04:00PM 7 Q. AND HE HAD MORE OF A SCIENCE BACKGROUND; IS THAT CORRECT?

04:00PM 8 A. YES.

04:00PM 9 Q. AND, IN FACT, HE HAD A BACHELOR'S DEGREE FROM THE MOSCOW

04:00PM 10 INSTITUTE OF PHYSICS AND TECHNOLOGY; IS THAT RIGHT?

04:00PM 11 A. I BELIEVE THAT'S RIGHT.

04:00PM 12 Q. OKAY. AND THEN HE ALSO HAD A PH.D. IN BIOLOGICAL

04:00PM 13 ENGINEERING FROM M.I.T.; IS THAT RIGHT?

04:00PM 14 A. YES.

04:00PM 15 Q. AND WHILE AT M.I.T., HIS FOCUS WAS ON MICROFLUIDICS;

04:00PM 16 CORRECT?

04:00PM 17 A. I DON'T RECALL WHAT HIS FOCUS, HIS PH.D. FOCUS WAS.

04:00PM 18 Q. OKAY. YEP.

04:00PM 19 AND DR. RABODZEY HAD DONE DUE DILIGENCE WORK IN THE PAST

04:00PM 20 IN CONNECTION WITH BIO AND LIFE SCIENCE COMPANIES; IS THAT

04:00PM 21 RIGHT?

04:00PM 22 A. YES.

04:00PM 23 Q. AND WHILE AT PFM, HE FOCUSSED ON BIOTECH COMPANIES;

04:00PM 24 CORRECT?

04:00PM 25 A. YES.

04:00PM 1 Q. AND SO ON THE THERANOS DEAL, HE KIND OF SERVED AS THE
04:01PM 2 SCIENCE EXPERT ON THE TEAM FOR DUE DILIGENCE; IS THAT FAIR?
04:01PM 3 A. HE WAS -- WE BROKE UP THE RESPONSIBILITIES, SO HE WAS MORE
04:01PM 4 ON THE DATA SIDE, AND SOME OF THE REGULATORY ISSUES.
04:01PM 5 Q. OKAY. AND THE DATA RELATED TO THE SCIENCE; CORRECT?
04:01PM 6 A. THE TESTING DATA THAT THEY HAD.
04:01PM 7 Q. RIGHT. THE DATA RELATED TO THE FUNCTIONING OF THE
04:01PM 8 THERANOS DEVICE; CORRECT?
04:01PM 9 A. YES.
04:01PM 10 Q. OKAY. AND THEN THERE WAS ANOTHER GENTLEMAN NAMED
04:01PM 11 SRI BALASURYAN; IS THAT RIGHT?
04:01PM 12 A. YES.
04:01PM 13 Q. AND HE WAS A SENIOR ANALYST; CORRECT?
04:01PM 14 A. YES.
04:01PM 15 Q. AND HE WAS RESPONSIBLE FOR THE FINANCIAL MODELING THAT YOU
04:01PM 16 DID DURING YOUR DUE DILIGENCE; IS THAT RIGHT?
04:01PM 17 A. YES.
04:01PM 18 Q. OKAY. AND HE HELPED CREATE THE MODEL WE JUST SAW THAT
04:01PM 19 CAME INTO EVIDENCE; RIGHT?
04:02PM 20 A. YES.
04:02PM 21 Q. AND HE ALSO HELPED CREATE SOME SLIDES FOR YOUR FINAL
04:02PM 22 PRESENTATION TO THE INVESTORS; IS THAT CORRECT?
04:02PM 23 A. I'M NOT SURE WHO CREATED THE SLIDES.
04:02PM 24 Q. OKAY. MR. BALASURYAN, YOU DON'T KNOW WHETHER HE
04:02PM 25 PARTICIPATED IN CREATING THE SLIDES?

04:02PM 1 A. IT CERTAINLY WAS A COLLABORATIVE EFFORTS. I DON'T KNOW
04:02PM 2 WHAT PARTICULAR ASPECTS HE DID VERSUS OTHER TEAM MEMBERS.

04:02PM 3 Q. OKAY. DURING YOUR DUE DILIGENCE PROCESS, YOU ALSO HIRED
04:02PM 4 OUTSIDE EXPERTS, DIDN'T YOU?

04:02PM 5 A. WHEN YOU -- COULD YOU BE A LITTLE MORE SPECIFIC WHEN YOU
04:02PM 6 SAY "HIRED"?

04:02PM 7 Q. WELL, YOU PAID THEM TO WORK ON THE DEAL?

04:02PM 8 A. NOT TO -- WE USE -- WE USE A THIRD -- WE USE THESE
04:02PM 9 ORGANIZATIONS THAT CONNECT US TO EXPERTS IN DIFFERENT AREAS OF
04:02PM 10 HEALTH CARE, AND SO WE'LL DO -- WE USE EXPERTS ALL OF THE TIME
04:03PM 11 FOR A SPECIFIC QUESTION.

04:03PM 12 BUT I DON'T RECALL HAVING A PAID EXPERT SPECIFIC FOR THE
04:03PM 13 THERANOS DEAL.

04:03PM 14 Q. OKAY.

04:03PM 15 A. BUT WE DID USE OUTSIDE EXPERTS THE WAY WE DO FOR ALL OF
04:03PM 16 OUR DUE DILIGENCE.

04:03PM 17 Q. OKAY. SO YOU USED OUTSIDE EXPERTS TO HELP WITH YOUR DUE
04:03PM 18 DILIGENCE ON THE THERANOS DEAL; CORRECT?

04:03PM 19 A. YES. YES.

04:03PM 20 Q. AND ONE OF THOSE WAS MR. CLAMMER; IS THAT RIGHT?

04:03PM 21 A. HE WAS NOT A PAID OUTSIDE EXPERT, NO.

04:03PM 22 Q. OKAY. BUT YOU USED HIM FOR HIS EXPERTISE; IS THAT FAIR?

04:03PM 23 A. WE DID. WE DID ADD HIM AS A MEMBER OF THE TEAM. SO, YES,
04:03PM 24 HE WAS PART OF THE PROCESS.

04:03PM 25 Q. OKAY. AND SO WHEN YOU WERE DOING THIS DUE DILIGENCE, ALL

04:03PM 1 OF THESE INDIVIDUALS THAT WE JUST WENT THROUGH, YOU WERE ALL
04:03PM 2 WORKING TOGETHER AS A TEAM, WEREN'T YOU?

04:03PM 3 A. WE ALL HAD OTHER RESPONSIBILITIES. SO IT'S -- YOU KNOW,
04:03PM 4 PART OF BEING ANALYST, YOU HAVE TO PROCESS MULTIPLE THINGS AT
04:04PM 5 THE SAME TIME.

04:04PM 6 Q. SO WERE YOU ALL WORKING TOGETHER AS A TEAM WHEN YOU DID
04:04PM 7 YOUR DUE DILIGENCE ON THERANOS?

04:04PM 8 A. WE WERE, WE WERE WORKING AS A TEAM, YES.

04:04PM 9 Q. AND --

04:04PM 10 THE COURT: AND LET'S -- WHY DON'T WE BREAK NOW FOR
04:04PM 11 THE DAY?

04:04PM 12 WE'LL CONTINUE THE EXAMINATION ON FRIDAY, FRIDAY MORNING
04:04PM 13 IS OUR NEXT DATE, LADIES AND GENTLEMEN.

04:04PM 14 AND LET ME TELL YOU, WE'LL -- OUR SCHEDULED TIME TO BEGIN
04:04PM 15 IS AT 9:00 O'CLOCK. I AM MEETING WITH THE LAWYERS BEFORE,
04:04PM 16 EARLIER, AND I RATHER EXPECT THAT WE'RE GOING TO GO A LITTLE
04:04PM 17 LONGER, SO WE'LL PROBABLY -- I'M THINKING 9:30 AT THE EARLIEST
04:04PM 18 IS THE TIME THAT WE'LL START, JUST FOR YOUR SCHEDULING
04:04PM 19 PURPOSES.

04:04PM 20 THE BREAKFAST ARRIVES, YOU KNOW, EARLY, SO FIRST COME,
04:04PM 21 FIRST SERVED ON THAT.

04:04PM 22 (LAUGHTER.)

04:04PM 23 THE COURT: BUT I THINK THAT WE'LL START AT ABOUT
04:04PM 24 9:30, JUST TO GIVE YOU FAIR WARNING.

04:04PM 25 AND SAME WITH YOU, SIR.

04:04PM 1 THE WITNESS: YES.

04:04PM 2 THE COURT: IF YOU COULD BE HERE SUCH THAT YOU COULD

04:04PM 3 BEGIN AGAIN AT 9:30, THAT WOULD BE GREAT.

04:05PM 4 THE WITNESS: OKAY.

04:05PM 5 THE COURT: THANK YOU.

04:05PM 6 WE'LL BE IN RECESS.

04:05PM 7 BEFORE YOU GO, I REMIND YOU OF THE ADMONITION. DON'T DO

04:05PM 8 ANYTHING TO LEARN ANYTHING ABOUT THIS CASE, ANY INVESTIGATION,

04:05PM 9 AND PLEASE DO NOT DISCUSS OR WATCH OR READ ANYTHING ABOUT THIS

04:05PM 10 CASE.

04:05PM 11 HAVE A GOOD EVENING. WE'LL SEE YOU FRIDAY MORNING. THANK

04:05PM 12 YOU.

04:05PM 13 (JURY OUT AT 4:05 P.M.)

04:05PM 14 THE COURT: MR. GROSSMAN, YOU CAN STAND DOWN. THANK

04:05PM 15 YOU.

04:05PM 16 PLEASE BE SEATED. THANK YOU.

04:06PM 17 ALL RIGHT. THE RECORD SHOULD REFLECT THAT OUR JURY HAS

04:06PM 18 LEFT FOR THE DAY.

04:06PM 19 MR. GROSSMAN HAS LEFT THE COURTROOM.

04:06PM 20 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

04:06PM 21 WE'LL GET TOGETHER AT 8:30, 8:15. IF YOU'RE HERE, WE'LL

04:06PM 22 START A LITTLE EARLY FOR OUR DISCUSSION ON THE PENDING MOTION.

04:06PM 23 MS. WALSH: YES, YOUR HONOR.

04:06PM 24 CAN I RAISE ONE ISSUE WITH THE COURT REGARDING SCHEDULING?

04:06PM 25 AND I DON'T KNOW, THE GOVERNMENT MIGHT ADDRESS THIS.

04:06PM 1 THE COURT: SURE.

04:06PM 2 MS. WALSH: SO WE'RE NOT SURE IF THE GOVERNMENT WAS
04:06PM 3 GOING TO CALL MR. KOVACEVICH. LAST WE KNEW THIS MORNING, THEIR
04:06PM 4 INTENTION WAS TO CALL HIM.

04:06PM 5 WE HAVEN'T MADE A FINAL DECISION YET, BUT WE WILL LIKELY
04:06PM 6 START A DEFENSE CASE ON FRIDAY, AND WE HAVE A WITNESS WHO,
04:06PM 7 BECAUSE OF HER SCHEDULE, CAN REALLY ONLY BE HERE ON FRIDAY OR
04:06PM 8 TWO WEEKS FROM FRIDAY ESSENTIALLY.

04:07PM 9 IT'S NOT A LONG WITNESS, BUT WE WOULD LIKE TO FIT HER IN,
04:07PM 10 IF POSSIBLE.

04:07PM 11 AND I'M WONDERING -- I'D LIKE TO HEAR FROM THE GOVERNMENT
04:07PM 12 AS TO WHAT THEIR INTENTION IS AS TO HOW LONG THEIR CASE IS NOW
04:07PM 13 GOING TO LAST.

04:07PM 14 AND IF IT'S POSSIBLE, IF WE NEED TO STAY LATER ON FRIDAY,
04:07PM 15 WE WOULD MAKE THAT REQUEST TO TRY TO FIT THIS WITNESS IN.

04:07PM 16 THE COURT: WELL, YOU'RE IN CONTROL OF THAT. YOU
04:07PM 17 HAVE CROSS-EXAMINATION. IF YOUR CROSS-EXAMINATION IS ANOTHER
04:07PM 18 20 MINUTES, WE'LL CERTAINLY BE ABLE TO DO EVERYTHING YOU NEED
04:07PM 19 TO DO. YOU'RE IN THE DRIVER'S SEAT.

04:07PM 20 MR. BOSTIC.

04:07PM 21 MR. BOSTIC: SO OF COURSE THE COURT IS CORRECT --
04:07PM 22 EXCUSE ME, THE COURT IS CORRECT, THE DEFENSE HAS THE CLOCK
04:07PM 23 RIGHT NOW.

04:07PM 24 AS FAR AS MR. KOVACEVICH, WE'RE STILL EXPLORING HIS
04:07PM 25 AVAILABILITY FOR FRIDAY, SO WE'LL LET THE DEFENSE KNOW AS SOON

04:07PM 1 AS WE KNOW WHAT IS HAPPENING IN TERMS OF THAT WITNESS.

04:07PM 2 I THINK FOR NOW IT WOULD BE PRUDENT TO PREPARE FOR BOTH
04:07PM 3 POSSIBILITIES, EITHER HIM TESTIFYING OR NOT.

04:08PM 4 THE COURT: OKAY. WELL, YOU'LL MEET AND CONFER AND
04:08PM 5 CONTINUE WITH THE COOPERATIVE SPIRIT THAT YOU HAVE ENGAGED IN
04:08PM 6 THROUGHOUT THIS TRIAL AND WORK THOSE ISSUES OUT.

04:08PM 7 MS. WALSH: SURE. WE WILL, YOUR HONOR.

04:08PM 8 BUT I GUESS I'M GIVING THE COURT A HEADS UP THAT WE MAY
04:08PM 9 REQUEST THAT THE COURT AND THE JURY STAY A LITTLE LATER IF WE
04:08PM 10 CAN TRY TO FIT THIS WITNESS IN.

04:08PM 11 THE COURT: OKAY. WE'RE COMPRESSING FRIDAY, AREN'T
04:08PM 12 WE, BECAUSE, AS I TOLD THE JURY, WE PROBABLY WON'T START UNTIL
04:08PM 13 9:30.

04:08PM 14 MS. WALSH: YEAH.

04:08PM 15 THE COURT: THAT'S JUST A FAIR ESTIMATE IF WE START
04:08PM 16 AT 8:15 OR SOMETHING LIKE THAT. I'M THINKING THAT DISCUSSION
04:08PM 17 WILL TAKE AT LEAST THAT LONG.

04:08PM 18 AND I THINK THE DEFENSE WANTS TO KNOW THE DIRECTION OF
04:08PM 19 THINGS AS SOON AS POSSIBLE.

04:08PM 20 AND BECAUSE IT'S ON A FRIDAY, IT MAY BE THAT, I DON'T
04:08PM 21 KNOW, BUT IT MAY BE THAT YOU DON'T GET AN ANSWER UNTIL
04:09PM 22 MONDAY --

04:09PM 23 MS. WALSH: SURE.

04:09PM 24 THE COURT: -- NEXT WEEK ON THAT.

04:09PM 25 SO THERE'S THAT.

04:09PM 1 AND THEN THERE'S THE -- YOU'RE FINISHING YOUR
04:09PM 2 CROSS-EXAMINATION. AND I DON'T KNOW IF YOU KNOW HOW LONG
04:09PM 3 THAT'S GOING TO BE. YOU DON'T HAVE TO TELL ME.

04:09PM 4 BUT THAT FACTORS INTO WHAT WE'RE GOING TO DO.

04:09PM 5 THEN, OF COURSE, WE DON'T KNOW IF THE WITNESS IS
04:09PM 6 AVAILABLE.

04:09PM 7 IT SOUNDS LIKE WE MAY HAVE COMPETING WITNESSES WITH
04:09PM 8 SIGNIFICANT LIMITATIONS, EITHER TIME OR HEALTH OR OTHERWISE.

04:09PM 9 MR. BOSTIC: SO, YOUR HONOR, IT MIGHT BE HELPFUL FOR
04:09PM 10 US TO MAP OUT WHAT THAT DAY WOULD LOOK LIKE IF MR. KOVACEVICH
04:09PM 11 DID TESTIFY.

04:09PM 12 SO, YES, AN ESTIMATE ON REMAINING CROSS FOR THIS WITNESS
04:09PM 13 WOULD BE HELPFUL.

04:09PM 14 I CAN TELL THE COURT AND THE DEFENSE THAT THE DIRECT OF
04:09PM 15 MR. KOVACEVICH WOULD BE LESS THAN AN HOUR, PROBABLY
04:09PM 16 SIGNIFICANTLY LESS THAN AN HOUR.

04:09PM 17 SO I'M NOT SURE WHAT THAT WOULD LEAVE THE DAY LOOKING LIKE
04:09PM 18 IN TERMS OF REMAINING TIME.

04:09PM 19 WE WOULD ALSO, FROM OUR PERSPECTIVE, WE WOULD BE HAPPY TO
04:09PM 20 TAKE A WITNESS OUT OF ORDER IN ORDER TO ACCOMMODATE THE DEFENSE
04:10PM 21 WITNESS'S SCHEDULE SUBJECT TO THE NEED, IF MR. KOVACEVICH
04:10PM 22 TESTIFIES, TO HAVE HIM KIND OF ON AND OFF THE STAND IN ONE
04:10PM 23 BLOCK IF WE COULD.

04:10PM 24 THE COURT: RIGHT.

04:10PM 25 MR. BOSTIC: WE DON'T WANT HIM TO TRAVEL TO THE

04:10PM 1 COURTHOUSE UNNECESSARILY, AND WE DON'T WANT TO INTERRUPT HIS
04:10PM 2 TESTIMONY FOR HIS SAKE.

04:10PM 3 BUT SUBJECT TO THAT, WE WOULD BE HAPPY TO ALTER THE ORDER.

04:10PM 4 THE COURT: WELL, THAT'S ANOTHER POSSIBILITY IS TO
04:10PM 5 TAKE A WITNESS OUT OF ORDER. I CAN'T REMEMBER IF WE'VE DONE
04:10PM 6 THAT IN THIS CASE.

04:10PM 7 I KNOW IT'S CERTAINLY --

04:10PM 8 MS. WALSH: WE HAVE.

04:10PM 9 THE COURT: YES. AND THE JURY IS AWARE OF THAT.

04:10PM 10 AND THAT'S ANOTHER POSSIBILITY, MS. WALSH, THAT YOU WANT
04:10PM 11 TO TALK WITH YOUR TEAM ABOUT.

04:10PM 12 MS. WALSH: SURE, SURE.

04:10PM 13 THE COURT: IN ADDITION TO REDUCING YOUR
04:10PM 14 CROSS-EXAMINATION. I'M SMILING WHEN I SAY THAT. YOU DO
04:10PM 15 WHATEVER YOU NEED TO DO, BUT YOU'RE IN CONTROL OF THAT, SO --
04:10PM 16 OKAY.

04:10PM 17 SO YOU'LL DISCUSS, AND AT LEAST YOU'LL SHARE SOME THOUGHTS
04:10PM 18 ON THAT, AND THEN WE CAN TALK ABOUT IT MORE ON FRIDAY MORNING.

04:11PM 19 MS. WALSH: SOUNDS GOOD.

04:11PM 20 MR. BOSTIC: ONE MORE OTHER POINT, IF I COULD, ON
04:11PM 21 THE TOPIC OF THE DEFENSE BEGINNING ITS CASE.

04:11PM 22 TO MY KNOWLEDGE, THE GOVERNMENT HAS NOT YET RECEIVED ANY
04:11PM 23 JENCKS FROM THE DEFENSE.

04:11PM 24 SO I'M NOT SURE IF IT'S APPROPRIATE FOR THE COURT TO ORDER
04:11PM 25 THAT PRODUCTION AT THIS TIME, BUT IT'S JUST SOMETHING THAT I

04:11PM 1 WANTED TO NOTE FOR THE RECORD.

04:11PM 2 THE COURT: WHAT WOULD YOU LIKE ME TO DO ABOUT THAT,

04:11PM 3 MS. WALSH?

04:11PM 4 MS. WALSH: YOUR HONOR, I WOULD LIKE TO CONFER WITH

04:11PM 5 MY TEAM. I KNOW WE'VE BEEN DISCUSSING IT. SO LET ME JUST

04:11PM 6 CONFER, AND WE CAN LET THE COURT KNOW.

04:11PM 7 THE COURT: CAN YOU, CAN YOU INCLUDE THAT TOPIC IN

04:11PM 8 YOUR DISCUSSION WITH MR. BOSTIC AND HIS TEAM ABOUT WHEN YOU

04:11PM 9 PLAN ON --

04:11PM 10 MS. WALSH: SURE. OF COURSE.

04:11PM 11 THE COURT: -- AND THEN WE'LL GO FROM THERE.

04:11PM 12 OKAY. GREAT.

04:11PM 13 MS. WALSH: THANK YOU.

04:11PM 14 THE COURT: MR. LEACH.

04:11PM 15 MR. LEACH: YOUR HONOR, I'M SORRY. ONE MORE

04:11PM 16 HOUSEKEEPING MATTER.

04:11PM 17 THE COURT: YES. SURE.

04:11PM 18 MR. LEACH: DURING THE EXAMINATION OF SO HAN SPIVEY

04:11PM 19 SEVERAL WEEKS AGO, THE COURT CONDITIONALLY ADMITTED

04:11PM 20 EXHIBIT 4859, WHICH IS BATES NUMBER RDV 012671.

04:12PM 21 IT'S A ONE-PAGE DOCUMENT WITH PROJECTED FINANCIAL

04:12PM 22 STATEMENTS AND SOME HANDWRITING ON IT.

04:12PM 23 THE COURT MAY RECALL IT FROM THE PRIOR TRIAL.

04:12PM 24 THE COURT CONDITIONALLY ADMITTED THE EXHIBIT SUBJECT TO --

04:12PM 25 IT CONDITIONALLY ADMITTED IT.

04:12PM 1 DURING THE EXAMINATION OF LISA PETERSON, WHO WAS THE
04:12PM 2 WITNESS WITH PERSONAL KNOWLEDGE OF THE DOCUMENT, THE GOVERNMENT
04:12PM 3 SHOWED HER EXHIBIT 1853, THE FIRST PAGE OF WHICH HAS THE SAME
04:12PM 4 BATES NUMBER.

04:12PM 5 THE COURT: RIGHT.

04:12PM 6 MR. LEACH: BUT WE USED A DIFFERENT EXHIBIT.

04:12PM 7 I JUST WOULD LIKE THE COURT TO ADVISE THE JURY THAT
04:12PM 8 WHATEVER THE CONDITIONS ON 4859 HAVE BEEN SATISFIED, AND WE
04:12PM 9 WOULD LIKE TO HAVE THAT DESCRIBED TO THE JURY BEFORE THE
04:12PM 10 GOVERNMENT RESTS.

04:12PM 11 THE COURT: THANK YOU.

04:12PM 12 MR. COOPERSMITH: YOUR HONOR, I'M JUST STANDING UP
04:12PM 13 BECAUSE THAT WAS A WITNESS THAT I HAD --

04:12PM 14 THE COURT: YES.

04:13PM 15 MR. COOPERSMITH: -- EARLIER IN THE TRIAL. SO THANK
04:13PM 16 YOU.

04:13PM 17 WHAT MR. LEACH IS PROPOSING SOUNDS FINE. I WOULD JUST
04:13PM 18 LIKE A CHANCE TO LOOK AT THE EXHIBIT AND SEE IT.

04:13PM 19 THE COURT: SURE.

04:13PM 20 MR. COOPERSMITH: I HAVE NO REASON TO DOUBT WHAT
04:13PM 21 MR. LEACH IS SAYING.

04:13PM 22 BUT IF WE COULD JUST ADVISE MR. LEACH AND THE COURT --

04:13PM 23 THE COURT: WELL, YOU'RE GOING TO -- THIS IS ANOTHER
04:13PM 24 AGENDA ITEM FOR YOUR MEET AND CONFER AND ON FRIDAY WE'LL TALK
04:13PM 25 ABOUT IT.

04:13PM 1 MR. COOPERSMITH: THAT SOUNDS GOOD.

04:13PM 2 THE COURT: OKAY. GREAT. THANKS FOR THE HEADS UP.

04:13PM 3 MR. LEACH: I APPRECIATE IT.

04:13PM 4 THE COURT: ALL RIGHT.

04:13PM 5 (COURT ADJOURNED AT 4:13 P.M.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

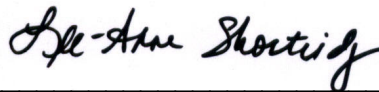
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MAY 18, 2022